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U.S. Bureau of Prohibition

Regulations 8 concerning
the manufacture...

Washington

1930

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UNITED STATES TREASURY DEPARTMENT
BUREAU OF PROHIBITION

REGULATIONS 8
CONCERNING
THE MANUFACTURE OF WHISKY
FOR NONBEVERAGE PURPOSES

UNDER THE REVISED STATUTES
OF THE UNITED STATES AND
SUBSEQUENT ACTS

DECEMBER, 1929

308

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Box 276



UNITED STATES
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REGULATIONS 8 CONCERNING THE MANUFACTURE OF WHISKY FOR NONBEVERAGE PURPOSES

In pursuance of the provisions of Treasury Decision No. 1 (Bureau of Prohibition), these regulations are prescribed governing the manufacture of whisky for nonbeverage purposes. Sections IV, V, VIII, and IX of Treasury Decision No. 1 read as follows:

SECTION IV

RIGHTS, PRIVILEGES, POWERS, AND DUTIES CONFERRED OR IMPOSED UPON THE COMMISSIONER OF PROHIBITION RELATING TO PROHIBITION

(1) There are hereby conferred and imposed upon the Commissioner of Prohibition, subject to the general supervision and direction of the Secretary of the Treasury, all the rights, privileges, powers, and duties conferred or imposed upon the Commissioner of Internal Revenue (and which are transferred to and conferred and imposed upon the Secretary of the Treasury by subdivision (a) of section 4 of the above act of March 3, 1927), by the national prohibition act as amended, or by the act entitled "An act supplemental to the national prohibition act," approved November 23, 1921, and the power conferred upon the Commissioner of Internal Revenue to remove distilled spirits from any internal revenue bonded warehouse to any other such warehouse, for the purpose of concentration, and to prescribe the form and penal sum of bonds covering distilled spirits in any such warehouse and in transit between such warehouses, except that all moneys shall be received and accounted for by the collectors of internal revenue, under the direction of the Commissioner of Internal Revenue.

(2) There are also hereby conferred and imposed upon the Commissioner of Prohibition, subject to the general supervision and direction of the Secretary of the Treasury, all the rights, privileges, powers, and duties conferred or imposed upon the Commissioner of Internal Revenue (and which are transferred to and conferred and imposed upon the Secretary of the Treasury by subdivision (a) of section 4 of the above act of March 3, 1927) by any law, in so far as such rights, privileges, powers, and duties relate to—

(a) The production, custody, and supervision of distilled spirits, alcohol, wines, fermented liquors, cereal beverages, denatured alcohol, and other such liquors and liquids.

(b) The establishment, construction, operation, custody, and supervision of distilleries, industrial alcohol plants, bonded warehouses, denaturing plants, wineries, bonded wine storerooms, breweries, rectifying houses, dealcoholizing plants, cereal beverage plants, and other places at which such spirits, liquors, or liquids are produced or stored.

(c) The determination, assertion, and compromise of liability for, and the institution and compromise of suits for the recovery of, internal-revenue taxes and penalties, but only in case a violation of law relating to the enforcement of the eighteenth amendment is involved, except that all moneys shall be received and accounted for by the collectors of internal revenue under the direction of the Commissioner of Internal Revenue.

(d) Inquiries and investigations relating to the filing of returns for occupational and commodity taxes and penalties in respect of intoxicating liquors, cereal beverages, and denatured alcohol.

(e) The seizure, for violation of the internal revenue laws relating to intoxicating liquors, cereal beverages, and denatured alcohol, of property, whether real or personal (except seizure under distraint warrant), and the custody, control, sale, and disposition of property so seized.

- (f) The discharge of liens, under section 902 of the revenue act of 1926.
 (3) All regulations shall be prescribed by the Commissioner of Prohibition, with the approval of the Secretary of the Treasury.

SECTION V

RIGHTS, PRIVILEGES, POWERS, AND DUTIES CONFERRED AND IMPOSED UPON THE OFFICERS AND EMPLOYEES OF THE BUREAU OF PROHIBITION, INCLUDING THE FIELD SERVICE OF THE BUREAU OF PROHIBITION, RELATING TO PROHIBITION

There are hereby conferred and imposed upon the officers and employees of the Bureau of Prohibition, including agents, inspectors, and other employees in the field service of the Bureau of Prohibition, all the rights, privileges, powers, and duties conferred or imposed upon the assistants, agents, and inspectors of the Commissioner of Internal Revenue (and which are transferred to and conferred and imposed upon the Secretary of the Treasury by subdivision (a) of section 4 of the above act of March 3, 1927), (1) by any law in so far as such rights, privileges, powers, and duties relate to any of the matters referred to in paragraph (2) of Section IV of this order, or (2) by any law referred to in paragraph (1) of Section IV of this order.

SECTION VIII

RIGHTS, PRIVILEGES, POWERS, AND DUTIES CONFERRED AND IMPOSED UPON THE COMMISSIONER OF INTERNAL REVENUE

There are hereby conferred and imposed upon the Commissioner of Internal Revenue all the rights, privileges, powers, and duties conferred or imposed upon such officer (and which are transferred to and conferred and imposed upon the Secretary of the Treasury by subdivision (a) of section 4 of the above act of March 3, 1927), by any law, except the rights, privileges, powers, and duties conferred or imposed upon any other person by Sections IV, V, VI, or VII of this order, but not excepting rights, privileges, powers, and duties relating to internal-revenue taxes where no violation of a law relating to the enforcement of the eighteenth amendment is involved. All regulations and changes in regulations shall be subject to the approval of the Secretary of the Treasury.

SECTION IX

RIGHTS, PRIVILEGES, POWERS, AND DUTIES CONFERRED AND IMPOSED UPON THE OFFICERS AND EMPLOYEES OF THE BUREAU OF INTERNAL REVENUE

There are hereby conferred and imposed upon the assistants, agents, and inspectors of the Commissioner of Internal Revenue all the rights, privileges, powers, and duties conferred or imposed upon such assistants, agents, and inspectors (and which are transferred to and conferred and imposed upon the Secretary of the Treasury by subdivision (a) of section 4 of the above act of March 3, 1927), by any law, except the rights, privileges, powers, and duties conferred or imposed upon any other person by Sections IV, V, VI, or VII of this order, but not excepting rights, privileges, powers, and duties relating to internal-revenue taxes where no violation of a law relating to the enforcement of the eighteenth amendment is involved.

DEFINITIONS

The term "commissioner" shall mean Commissioner of Prohibition.

The term "administrator" shall mean Prohibition Administrator.

TAX ON DISTILLED SPIRITS

The rate of tax on distilled spirits for nonbeverage purposes effective on and after January 1, 1928, is fixed by section 900 of the revenue act of 1926 at \$1.10 per proof gallon or wine gallon when below proof, and proportionately at a like rate on fractional parts of such proof or wine gallon.

DISTILLED SPIRITS DEFINED

Section 3248 of the Revised Statutes defines distilled spirits, spirits, alcohol, and alcoholic spirit, within the true intent and meaning of the act, to be that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation of grain, starch, molasses, or sugar, including all dilutions and mixtures of this substance, and declares that the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirit, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

PROOF SPIRIT DEFINED

Section 3249, Revised Statutes, provides that proof spirit shall be held to be that alcoholic liquor which contains one-half its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten-thousandths (0.7939) at 60° F.

TAX AND ASSESSMENTS TO BE LIENS

Section 3251 of the Revised Statutes as amended provides that every proprietor or possessor of, and every person in any manner interested in the use of, any still, distillery, or distilling apparatus shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom, and that the tax shall be a first lien on the spirits distilled, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, and on the lot or tract of land whereon the distillery is situated, together with any building thereon, from the time said spirits are in existence as such until the tax is paid.

Section 3309, Revised Statutes, as amended provides that all assessments made thereunder shall be a lien, from the time the assessment is made until the same shall have been paid, upon all distilled spirits on the distillery premises, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the tract of land whereon the said distillery is located, and any building thereon.

DISTILLER DEFINED

Section 3247 of the Revised Statutes provides that every person who produces distilled spirits, or who brews or makes mash, wort, or wash fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirit from any fermented substance, or who, making or keeping mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller.

The making of fermented liquors or of fermented liquids to be used for the manufacture of vinegar exclusively, and the separation, by a vaporizing process, of the alcoholic property from a mash and its condensation by being introduced into water or other liquid used in making vinegar, is permitted by section 3282, Revised Statutes, as amended by section 5 of the act of March 1, 1879.

MANUFACTURERS OF STILLS

Subsection 2 of section 3244 of the Revised Statutes as amended provides that any person who manufactures any still or worm to be used in distilling shall be deemed a manufacturer of stills, and shall pay a special tax of \$50, and in addition thereto \$20 for each still or worm for distilling made by him, i. e., \$20 for each still and \$20 for each worm.

Whenever an old still or worm which has become unfit for use is repaired by the addition of new material to such an extent as to virtually result in the construction of a new still or worm, the manufacturer thereof will be held liable to the tax of \$20 for each still or worm so constructed by him.

By section 18 of the act of May 28, 1880, distillers in registered distilleries who manufacture for their own use wooden stills are exempted from the payment of the special tax, but they are required to give notice to the collector of the district in which the distillery is located of each still manufactured before the same is used.

This does not apply to the manufacture of wooden stills for the use of distillers by any other persons than the distillers themselves, nor does it apply to the manufacture of wooden stills by a distiller for any other than his own use.

No tax should be required on account of the manufacture of a still of the capacity of 5 gallons or less, unless it shall appear that the still has been in fact used for the purpose of distilling spirits, and that the manufacturer knew, or could with proper inquiry have known at the time of disposing of such still, that it was intended to be so used.

Stills of a larger capacity than 5 gallons, so constructed that they can be used for the distillation of spirits, will be presumed to be intended for use in distilling spirits, and their manufacture will be held to incur the taxes imposed by section 3244, Revised Statutes, paragraph "Second," unless the person for whom it is made, by evidence under oath submitted to and filed with the collector, removes this presumption by showing that the still is not to be used for the production of spirits and setting forth specifically the actual purposes for which it is to be used.

Any person manufacturing any still, boiler, or other vessel to be used for the purpose of distilling must, before the same is removed from the place of manufacture, notify, in writing, the collector of the district in which such still, boiler, or other vessel is to be set up, by whom it is to be used, its capacity, and the time when the same is to be removed from the place of manufacture. No such still can be set up without the permit of such collector for that purpose. (See sec. 3265, Rev. Stat.)

REGISTRY OF STILLS

Every person having in his possession or custody, or under his control, any still or distilling apparatus set up, except retorts for the production of wood alcohol and glass laboratory stills of small capacity, shall register the same in quadruplicate on Form 26 with the administrator of the district in which set up, except where such stills have heretofore been registered and no change in possession,

custody, or control or location has occurred since such registry. The original copy of Form 26 will be retained by the administrator for his files. One copy of the form will be forwarded to the commissioner, one copy with notation of receipt thereon will be returned by the administrator to the registrant, and one copy will be sent to the collector of internal revenue of the district in which the still was manufactured. The registrant must retain the copy returned to him at the place of registration so that the same will be available for inspection by visiting Government officers.

Collectors of internal revenue will continue to have jurisdiction over the collection of occupational taxes on manufacturers of stills, commodity taxes on stills and worms or condensers, and permits for removal, and the affidavits required in triplicate by Treasury Decision 3068 should be filed with them. The collector issuing the permit and the person selling the still or worm will each retain one copy of the affidavit and the remaining copy will be sent by the collector to the administrator of the district where the still is to be set up. (Sec. 3258, R. S., Treasury Decisions 2993, 3068, and 1 and 2, Prohibition.)

NOTICE BY DISTILLER

Every person engaged in the business of a distiller, or intending to engage therein, or who wishes to continue in such business on and after the 1st of May of each year, must give notice of such intention (sec. 3259, U. S. Rev. Stat.) over his own signature to the administrator who will forward a certified copy of such notice to the Commissioner of Prohibition. This notice will be given on Form 27a in the case of a distiller using materials other than fruits.

In preparing the notice on Form 27a reference should be had to sections 3259, 3262, 3267, and 3271, Revised Statutes, and the notice should be prepared in strict conformity therewith.

The Form 27a, required in the case of a distiller from grain or molasses, must fully state the name and place of residence of the person giving the said notice, or, if a company, firm, or corporation, the name and residence of each member thereof or stockholder therein; the name and residence of every person interested or to be interested in the business; the name or style under which the business is to be conducted; the place where said business is to be carried on; the name of the owner of the stills and other utensils; the kinds of stills and cubic contents of each; the mode of boiling; number and kind of boilers; number of mash tubs and fermenting tubs and cubic contents of each in gallons; mode of mashing and fermenting; the number of receiving cisterns and cubic contents of each in gallons; the number of hours the distiller will ferment each tub of beer; when the fermenting period begins; the number of gallons of mash or beer which will represent a bushel of grain; kind of materials to be used; the estimated number of bushels of grain or gallons of molasses that can be mashed or fermented in a day of 24 hours and the estimated number of proof gallons of spirits that can be produced in the same time; a particular description of the lot or tract of land on which the distillery and warehouse are situated; the size and description of all buildings on the premises, and of what materials constructed, that the warehouse is on and constitutes a part of the

distillery premises, and that no door, window, or other opening therefrom leads into the distillery or into any other room or building; the present condition of title; and that the said distillery premises are not within 600 feet in a direct line of any premises authorized to be used for rectifying or refining distilled spirits, if such be the fact.

Under the heading "Statement of present condition of title," it must be shown—

First. That the title to the distillery and premises is vested in the person engaging in the business of distilling, in fee, unincumbered by any mortgage, judgment, or other lien.

Or, second. That the title is vested in the distiller in fee, but incumbered with a mortgage, judgment, or other lien, as the case may be, and that the written consent of such mortgagee, judgment creditor, or other lien holder has been obtained, as required by section 3262, Revised Statutes.

Or, third. That the title is vested in some person other than the distiller (naming such person), and that the consent of the owner, as well as the consent of any other person who may be interested in the premises, has been obtained.

Or, fourth. That the owner of the distillery or distilling apparatus erected prior to the 20th day of July, 1868, has only an estate for a term of years, or other estate less than fee simple, in the lot or tract of land on which the distillery is situated, the evidence of title to which was duly recorded prior to July 20, 1868, and that a leaseholder's bond has been given in compliance with the provisions of section 3262, Revised Statutes.

Or, fifth. That the owner of the distillery or distilling apparatus, erected prior to July 20, 1868, has only an estate for a term of years, or other estate less than fee simple, in the lot or tract of land on which the distillery is situated, the evidence of title to which was duly executed prior to July 20, 1868, but was not required by the laws of the State to be recorded at the time of its execution; and that a leaseholder's bond has been given in lieu of consent, as authorized by section 3262 aforesaid.

Or, sixth. In case of such prior erection, that the title is, and has been, in litigation since July 20, 1868, and that a bond has been given in lieu of consent, as authorized by section 3262 aforesaid.

Or, seventh. In case of such prior erection, that the owner is possessed of the fee of the premises, but incumbered with a mortgage, executed and duly recorded prior to the 20th day of July, 1868, and not yet due, and that a bond has been given in lieu of consent, as authorized by section 3262 aforesaid.

Or, eighth. In case of such prior erection, that the title is vested in some person or persons (showing whom and how incapacitated) incapable of giving consent, and that a bond has been given in lieu of such consent, as authorized by section 3262 aforesaid.

Or, ninth. In case of such prior erection, that there has been an increase of the distillery premises by the addition of land or buildings adjacent or contiguous thereto, not owned by the distiller in fee, and that a bond has been given in lieu of consent with respect to such addition. (See the second proviso to section 3262 aforesaid.)

Or, tenth. That the distillery has been sold at a judicial or other sale, in favor of the United States, giving the date of such sale and

stating that the time allowed by law for redemption has not expired, and that a bond in lieu of consent has been given, as authorized by the first proviso to section 3262 aforesaid.

Under the provisions of section 3262 no distiller's bond can be approved unless he is the owner in fee, unincumbered by any mortgage, judgment, or other lien, of the lot or tract of land on which the distillery is situated, or unless he files with the administrator, *in connection with his notice*, the written consent of the owner of the fee, and of any mortgagee, judgment creditor, or other person having a lien thereon, that the premises may be used for the purpose of distilling spirits subject to the provisions of law, and expressly stipulating that the lien of the United States for taxes and penalties shall have priority of such mortgage, judgment, or other incumbrance, and that in case of the forfeiture of the distillery premises, or any part thereof, the title of the same shall vest in the United States, discharged from such mortgage, judgment, or other incumbrance. This instrument must contain a full and accurate description of the lot or tract of land, and must be duly acknowledged before an officer authorized to take acknowledgments of deeds and executed with all the formalities required in conveyances of real estate by the laws of the State where the same is to be recorded, and, in case of consent of the owner of the fee, the wife must join in the execution and due acknowledgment thereof, so as to release her claim to dower. The consent should then be duly recorded before the same is filed with the administrator.

In every case where the written consent of the owner of the premises or of holders of liens has been given in lieu of an unincumbered fee simple, that fact should not only appear in the statement of title, but a copy of such consent should be forwarded to the Commissioner of Prohibition, accompanying the distiller's notice, that it may be determined whether the requirements of section 3262, Revised Statutes, have been fully complied with. In all such cases a new consent will be required for each year, beginning on the 1st day of May, excepting only when the consent has been given for a fixed time exceeding one year; and in these cases the administrator should be careful to have a copy of such consent taken each year, to accompany and to be made a part of the distiller's notice then sent.

When the condition of the title is such that a bond may be accepted in lieu of the written consent, it must be shown that the distillery was erected prior to July 20, 1868, except in case of a distillery sold at judicial or other sale in favor of the United States, and that such bond has been filed.

As the question of title to the real estate is material, the administrator should require of the distiller a properly certified statement or abstract of the title to such estate to be exhibited to and filed with him, and full evidence as to what, if any, liens or incumbrances exist thereon.

Errors most frequently occur in the description of the distillery premises, either in being too indefinite or in embracing a large tract of land, most of which evidently constitutes no part of the distillery premises. The description should be limited to the lot or parcel of land actually used in connection with the distillery, and for that pur-

pose alone, and should be as particular as is required in a deed of conveyance, and, when the description is by metes and bounds, the point of beginning should be located with perfect accuracy, preferably with respect to its distance and bearings from some near and well-known landmark on the distillery premises.

The importance of so accurately describing the premises will be seen when it is remembered that, under certain circumstances, the Government acquires important liens thereon; that the distiller is prohibited from carrying on any other business on his distillery premises; that revenue officers have certain rights to enter and inspect distillery premises; and that in certain cases the distillery premises are forfeited to the United States. The extent of the premises, therefore, should be definite and certain, and the description in Form 27a is that which must be referred to to determine their extent.

The distiller, in stating the number of hours in which the distillery will ferment each tub of mash or beer, should name that number of hours within which he is allowed by law to fill a fermenting tub once and no more, namely, 72 hours for a sweet-mash distillery, 96 hours for a sour-mash distillery, and 144 hours for a rum distillery.

He will also state the beginning of the fermenting period to be when the filling of the tub begins, or when the tub is actually full, as the case may be.

Every blank in the prescribed form must be properly filled, and in case of any change in the location, form, capacity, ownership, agency, name or style, superintendency, persons interested in the business of such distillery, including stockholders in a corporation, the fermenting period, the time when the fermenting period begins, or in the number of gallons of mash or beer which will represent a bushel of grain, notice thereof must be given in writing to the administrator of the district or officer in charge of the distillery within 24 hours after such change.

The signature to the notice, when given by an individual, must in all cases be made by the distiller in person, or in his name by his authorized agent or attorney.

In case of a firm the signature must be made in the firm name by a member of the firm, or by some person duly authorized as above.

In case of a corporation the signature must be made in the name and under the seal of the corporation by the proper officer thereof.

Any Government officer receiving such notice shall immediately transmit it to the administrator, and the administrator will immediately forward a copy of the same to the commissioner.

ALL NOTICES on Form 27a will be examined by the commissioner, and NO DISTILLERY WAREHOUSE will be established or STOREKEEPER-GAUGER assigned thereto until such notice is approved.

CHANGE OF TITLE, OR INCUMBRANCE, OF DISTILLERY PROPERTY

Where the title to the lot or tract of land upon which an authorized distillery is located is changed by a sale, judicial or otherwise, or there is any change in the ownership of the premises or distilling apparatus; or where the lot or tract of land on which the distillery stands, or any part thereof, or any of the distilling apparatus, subsequent to the approval of the bond, becomes subject to or incum-

bered by any mortgage, judgment, or other lien, a new notice on Form 27a, with the necessary consent, is required; and in the case of such an incumbrance a new bond may also be required at the discretion of the administrator or of the commissioner.

CHANGE OF PERSONS INTERESTED IN BUSINESS

Where there is any change in the persons shown by the last notice to be interested in the business, except stockholders in distilling corporations, the distillery is no longer duly authorized, and the same steps must be taken as in case of a new distillery, except that the distiller may adopt or assent in writing to the correctness of the plan and survey on file.

When a succession or actual change in the person or persons interested in the operations of a distillery shall take place, the business of producing spirits must be completely finished by the person or persons first carrying on the business and the distillery suspended before the business shall be undertaken or begun by the succeeding distiller, unless by an agreement between the outgoing distiller and the successor it shall be arranged to transfer from the former to the latter at midnight of a certain day all mash and beer on hand, and all unfinished spirits outside the cistern room at that hour; and, unless in advance of the day agreed upon, the necessary distillery papers shall have been submitted to the administrator and by him forwarded to the commissioner, so that the approval of warehouse for the successor and assignment of storekeeper thereto may be made to take effect on the day next succeeding that at the close of which the transfer is made, and the administrator advised so that he may approve the bond of the new distiller on that day.

CHANGE OF NAME

When a distiller desires to operate his distillery under another name or style than that in which it has been operated, he must give notice of his intention so to do upon the Form 27a for distillers' annual notices, and also secure new permit, Form 1405, and give a new annual bond unless the permit and bond under which he is then operating shall recite the name to be adopted as the name or as one of the names under which he proposes to carry on the business of distilling.

When a nominal change shall occur at a distillery, by reason of a change in the name or style in which the operations at the distillery are conducted, it will not be required that the business of producing spirits shall be completely finished and operations suspended by the distiller desiring to change his name or style before the business shall be undertaken or begun by him under a different name or style; nor will he be required to give notice of suspension upon Form 124.

The sign required to be displayed by section 3279, Revised Statutes, must always exhibit the name under which the distillery is being operated.

A distilling corporation can conduct the business of distilling spirits in a name or style other than the lawful corporate name upon compliance with the above regulation.

CONSTRUCTION OF DISTILLERIES

The door of the furnace of every still or boiler used in any distillery (sec. 3269) must be so constructed that it may be securely fastened and locked. The furnace must be so constructed and the door so affixed that, when the Government lock is applied, it shall effectually prevent the door from being opened and shall prevent the lighting of any fire in such furnace or under such still or boiler.

When steam is conveyed to the distillery from adjoining premises the pipe used for that purpose must be provided with a valve inside the distillery wall so arranged that it can be securely locked.

The fermenting tubs must be so placed as to be easily accessible to any revenue officer, and must each have painted thereon in oil colors its cubic contents in gallons, with the number of the tub, in figures not less than 3 inches in length and $2\frac{1}{2}$ inches in breadth, which should correspond with that given in the notice and on the plan. There must be a clear space of not less than 1 foot around every wood still, and not less than 2 feet around every doubler and worm tank. All high and low wine tubs and all vessels used as receptacles for spirits between the outlet of the worm and the receiving cisterns must be so constructed as to admit of examination of every part thereof. The doubler and worm tanks must be elevated not less than 1 foot from the floor. Every fixed pipe, except those used only for the conveyance of water or of spent mash or beer, must be so fixed and placed as to be capable of being examined for its whole length and must be painted and kept painted as follows: Pipes for the conveyance of mash or beer, of a red color; for the conveyance of low wines back into still or doubler, blue; for the conveyance of spirits, black; for the conveyance of water, white; and they must be designated by those colors on the plan.

The pipes, vessels, or other apparatus by which the outlet of the stills, boilers, or other vessels is connected with the cisterns in the cistern room must be so constructed as to be always exposed to the view of the officer, and so as to prevent the abstraction of spirits while passing from the outlet of the worm or condenser back to the still, or doubler, or forward to the receiving cistern.

All necessary openings in the pipes or vessels between the still and receiving cisterns must be secured and locked, the key at all times to be in the possession of the storekeeper-gauger.

REDISTILLING OR RECTIFYING ROOM

The room or building in which are carried on the processes of rectifying, purifying, or refining distilled spirits in the course of original and continuous distillation authorized by section 3244. Revised Statutes, must be securely constructed in such manner as to render entrance impossible in the absence of the storekeeper-gauger without such entry being detected.

The doors and windows must be so constructed that they may be securely locked and fastened. All the pipes, vessels, and other apparatus used in purifying or refining spirits must be so attached that the spirits will pass through the purifying process in their passage from the beer still to the receiving cisterns, and their passage must

be through continuous and securely closed pipes and vessels, so as to preclude the distiller from access to the spirits except in the presence of the storekeeper-gauger, and then only when access is indispensable to the direction of the further process of manufacture. All necessary openings must be under a prescribed lock, the key to be kept by the storekeeper-gauger.

In this room must be erected cisterns of sufficient capacity to hold all the high wines produced each day, and into which such high wines must be run before undergoing any of the further processes of manufacture. These cisterns must be provided with gauges or other means for readily and accurately ascertaining the quantity of spirits contained therein at any time.

CISTERN ROOM

Section 3267, Revised Statutes, requires that the owner, agent, or superintendent of any distillery shall erect in a room or building, to be provided and used for that purpose and for no other, and to be constructed in the manner to be prescribed by the commissioner, two or more receiving cisterns, each to be at least of sufficient capacity to hold all the spirits distilled during a day of 24 hours.

These receiving cisterns must be placed in a room or building made perfectly secure, said room or building to be so constructed as to render it impossible for any person to enter in the absence of the gauger without such entry being detected. The ceiling and walls inside of such room or building must be plastered, or cased with matched boards, and if constructed of wood the walls must also be clapboarded on the outside or sided up in the manner usually employed for weatherboarding. The floor must be of brick or stone laid in cement, or of concrete or cement, or of ordinary flooring plank, the same to be tongued and grooved, or laid double, the boards crossing each other at right angles, and in either case to be securely nailed or fastened. The windows must be secured by iron bars or gratings and to each window must be affixed solid shutters of wood or iron, so constructed that they may be securely barred and fastened on the inside. The door must be thick and substantial and so constructed that it may be securely locked and fastened. The hinges on the window shutters and door must be so affixed as to prevent their removal from the outside. The staple to which the Government lock is applied must be well secured, so that it can not be drawn or removed.

Where a distiller draws off his spirits but once in three days he must have three cisterns. He can not, in any case, have less than two. The product of each day's distillation shall be kept separate, and where one kind of spirits only is produced it must all be run into one receiving cistern; where two or more kinds of spirits, or two or more grades of the same kinds of spirits are produced on the same day, two or more cisterns may be used; but in no case can the product of one day's distillation be mixed with the product of another or second day. If the distiller has not provided at least two separate cisterns, each of a capacity sufficient to hold a full day's product when running at the full capacity of the distillery, the administrator has no right to approve his bond.

These cisterns must not be connected with each other, and must be so constructed as to leave an open space of at least 3 feet between the top and the roof or floor above, and a space of not less than 18 inches between the bottom and the floor below, and they must be separated so that the officer may pass around them.

The top of each cistern must be securely covered, and no opening will be allowed in the top, except one of sufficient size to allow the distiller to properly plunge or mix the spirits with the water introduced for reducing the spirits to the proof desired.

Said opening must be so covered that it may be locked, and the gauger will lock the same on leaving the cistern room and retain the key. The faucet, through which the spirits are drawn from the receiving cisterns, must also be locked and the key kept by the gauger.

The stopcocks that control the flow of the spirits to the receiving cisterns must be so arranged that the spirits may be run into either of the cisterns; and said stopcocks, if in the receiving room, must be controlled by rods, the handles of which must extend into the distillery and be under lock and key; if such stopcocks are outside of the receiving room they must be boxed and securely locked; and in either case the storekeeper-gauger will keep the key. The storekeeper-gauger, and he alone, is authorized to change the flow of the spirits from one cistern to another.

CUSTODY OF CISTERN ROOM

Storekeeper-gaugers are made the custodians of the receiving rooms at distilleries, and are held responsible for the safe-keeping of the spirits run into the receiving cisterns until drawn off under their supervision and delivered in proper manner into the custody of the storekeeper-gauger at the distillery bonded warehouse, so far as any loss may be reasonably guarded against, and under no circumstances will they intrust the key to the lock on the door of the receiving room to any person other than the administrator of the district; and they are enjoined not to admit any person in the receiving room except in their presence.

MEAL ROOM

The distillery must be so constructed as to render it impossible for more grain to be added to the mash without the knowledge of the storekeeper-gauger after the proper quantity of each kind of grain has been weighed out by him. It is therefore prescribed that in all grain distilleries where meal is stored on the premises a securely constructed meal room shall be provided which shall be locked and otherwise secured by proper fastenings, and that the meal hoppers, through which the meal is conveyed to the mash tub, shall be securely covered and locked, and that the outlets shall be closed and locked, the storekeeper-gauger to have possession of the keys. In cases where meal hoppers are not used and a room is constructed in the story immediately above the mash tub, it must be securely locked and fastened, and the openings in the floor must also be closed and locked, the storekeeper-gauger to have possession of the keys. No one shall have access to the meal room except in the presence of the storekeeper-gauger.

OFFICE ACCOMMODATIONS

The distiller will provide and maintain such suitable office accommodations on the distillery premises for the use of the officers assigned to duty at the distillery as may be necessary for keeping and preserving their records and making the required returns and reports.

EXAMINATION OF DISTILLERIES BY ADMINISTRATORS

Before allowing any distiller to commence operations the administrator should thoroughly examine the distillery proposed to be operated, and determine whether it is constructed in strict accordance with section 3269, Revised Statutes; that the clear spaces required by said section are fully observed; that the pipes are properly painted, and that the connections between the still and the receiving cisterns are closed; and that there are no openings in the apparatus from the time the vapor rises in the stills until it is deposited in the receiving cisterns, except such openings as may be found necessary for the conduct of the business, which openings must in all cases be securely locked and the key placed in charge of the storekeeper-gauger.

SIGNS, FENCES, AND GATES

Every person engaged in distilling spirits is required (sec. 3279, Rev. Stat.) to place and keep conspicuously on the outside of his distillery a sign exhibiting in plain and legible letters not less than 3 inches in length, painted in oil colors or gilded, and of a proper and proportionate width, the name or firm of the distiller, with the words, "Registered distillery." A penalty of \$500 attaches to the person who neglects or refuses to display such sign in a conspicuous place on the outside of his distillery.

Under section 3275, Revised Statutes, no fence or wall of a height greater than 5 feet can be allowed around the premises of any distillery, so as to prevent easy and immediate access thereto. Pursuant to the provisions of the same section every distiller shall furnish to the administrator of the district as many keys to the gates and doors of the distillery as may be required by the administrator from time to time; and the distillery must always be kept accessible to any officer or other person having such key.

PLAN OF DISTILLERY

Previous to the approval of his bond every person intending to engage in the business of a distiller must, under the direction of the administrator, cause to be made at his own expense an accurate plan and description in triplicate of the distillery and distilling apparatus, as provided in section 3263, Revised Statutes. Such plan must be on good paper or tracing linen, 15 by 20 inches in size, outside measure, with a margin of at least 1 inch clear space on each side of the drawings, lettering, and writing, so that such drawings, lettering, and writing shall not exceed 13 by 18 inches in size. The plans must be drawn to scale, and the scale must be indicated on each drawing. Where the distillery or apparatus occupies more than one

floor or story, each floor or story must be shown by a floor plan on a separate sheet, and, if the apparatus be complicated, by one or more elevation or vertical sectional drawings to show the connections and clear spaces. The administrator, under whose direction the plan is to be made and who is to certify as to its correctness, must test the accuracy of every plan made. He must see that competent draftsmen are employed to make it. He will also see that the name of the distiller, the number of the distillery, and the designation of the drawing as a plan, supplemental plan, a plat, or the story represented are indicated at the top of the sheet within the margin in very plain and legible characters.

The plans must show the exact location of each still, boiler, doubler, worm tub, and receiving cistern, the course and construction of all fixed pipes, and of every branch and every cock or joint thereof, and of every valve therein, together with every place, vessel, tub, or utensil from and to which any such pipe leads, or with which it communicates; also the number and location and cubic contents of every still, mash tub, and fermenting tub; the cubic contents of every receiving cistern; and each fixed pipe and the purpose for which such pipe is used must be indicated thereon by its color. Pipes for the conveyance of mash or beer must be painted a red color; for the conveyance of low wines back into still or doubler, blue; for the conveyance of spirits, black; for the conveyance of water, white.

The description above referred to should, where the space on the sheet will admit of it, be written upon the particular sheet to which it relates, and references to utensils and apparatus should be either by letters or figures.

The accuracy of every plan and description must be verified by the administrator, the draftsman, and the distiller, and this certificate must be dated, and should be substantially in the following form:

— District —, 19—.

We hereby certify that this is an accurate plan (plat or supplemental plan, as the case may be) of the distillery (or distillery premises) of —, No. —, of this district.

—, Administrator.
—, Draftsman.
—, Distiller.

After such plan is made, no alteration can be made in such distillery or distilling apparatus without the written consent of the administrator, and such alteration must be shown by a supplemental plan of the entire floor on which the alterations were made, which should also be made in triplicate like the original. One of said plans is to be kept displayed in some conspicuous place in the distillery, one kept by the administrator, and one transmitted by him to the commissioner, *rolled and not folded*; and any supplemental plan will be disposed of in the same manner.

In case a distiller wishes to commence business in a distillery a plan and description of which are already on file in this office, no new plan or description need be made, unless changes have been made in the apparatus. If no changes have been made, the person intending to commence business may accept the plan and description

on file. Such acceptance, embracing a certificate that no change has been made, must be made in triplicate, in writing, and one copy attached to each plan.

Plats of distillery premises must be drawn so as to agree exactly in the outer boundary lines with the description of the same contained in the notice on Form 27a, and show in outline thereon the buildings and their respective locations, and the cardinal points of the compass must also be indicated thereon.

SURVEY OF DISTILLERIES

Pursuant to the provisions of Section 3264, Revised Statutes, as amended, on receipt of notice that any person, firm, or corporation wishes to commence the business of distilling, the administrator, or an officer to be designated by him, shall proceed in person, at the expense of the United States, with the aid of an assistant designated by the commissioner for the purpose of making surveys of distilleries in that district, to make a survey of such distillery for the purpose of estimating and determining its true spirit-producing capacity for a day of 24 hours.

But when the capacity of the distillery as stated by the distiller on Form 27a does not exceed 150 proof gallons of spirits every 24 hours, the survey may be made by the administrator or other officer designated by him without the aid of an assistant.

Surveys may be made without revisiting the distillery, when made for the purpose of correcting clerical errors or errors of computation existing in the report of a previous survey, or when the purpose of the resurvey does not require the remeasurement of the distillery utensils; as, for example, when a resurvey is occasioned by a change in the strength of the mash or beer which the distiller proposes to use.

Where an officer is designated for the purpose of making surveys the designation must be in writing.

Administrators will report to this office the name of each officer designated for this purpose, with the date of designation, and will also promptly report the revocation of such a designation and its date.

In making the survey the officers will assume that the distiller will put his machinery and apparatus in good working order, use good material, and employ competent and skillful workmen, and so manage his business as to produce the most favorable results; and the question to be determined is what, under such circumstances, is the number of bushels of grain or gallons of molasses which can be mashed and fermented in 24 hours, and the quantity of spirits that can be produced in the same time.

The *true spirit-producing capacity* of a distillery is not limited to what the distiller may produce by following a particular course which he has marked out, but what may be produced under favorable circumstances. The distiller, for instance, may say that he will mash a certain number of bushels, and but once a day, and will use a portion only of his fermenting tubs; but what he could produce by that process is not the true spirit-producing capacity of his dis-

tillery, because he could mash double the proposed number of bushels, and three or four times instead of once per day, and can ferment twice or three times as much as he states, and of course increase his product in proportion. The true spirit-producing capacity of such a distillery is not the amount which is so proposed to be produced, but the amount which *can* be produced, using all the machinery and apparatus, under competent and skillful management, taking as a basis for the calculation such premises as will produce the best practical results.

In order to estimate and determine the true spirit-producing capacity of a distillery it is necessary to ascertain the capacity of the mash and fermenting tubs. This should be done by actual and careful measurement, and the report must show, in inches and fourths of an inch, the greatest diameter, least diameter, and depth of each round or oval tub; the length, breadth, and depth of each square tub; the number of dry inches allowed for stirring or manipulating the mash in the mash tubs, and the number allowed for fermenting the beer in the fermenters; the working capacity of each tub, in gallons. In estimating the working capacity of the mash tubs in bushels, 25 gallons of mash will be taken to represent not less than 1 bushel. The mashing capacity should be limited by the fermenting capacity, as the distiller would not, it is supposed, mash more than he could ferment; and where there is an excess of mashing capacity the fact should be noted and the reason for the excess stated, as the mash tubs may be used for fermenters, or there may be facilities for fermenting which do not appear upon the plan.

To determine the capacity of fermenting tubs the following rules will be observed as sufficiently accurate for all practical purposes, though not mathematically correct: Having found the top and bottom diameters in inches, add them together and divide by 2. This will give the mean diameter of round tubs sufficiently near for all practical purposes. Multiply the square of the mean diameter by the decimal 0.0034, which will give the number of gallons and fractions of a gallon in four decimal places for 1 inch of depth. Multiply the result so found by the depth (in inches) less the number of dry inches allowed for fermentation, as hereinafter prescribed, and the result will be the working capacity of the tub in gallons. For square tubs, multiply the length and breadth (in inches) together and divide by 231, and it will give the number of gallons for 1 inch of depth.

For oval tubs, multiply the greatest and least diameters of the top of the tub (in inches) together and that product by 0.0034, and the result will be the number of gallons for 1 inch of depth at the top of the tub. The same process with the greatest and least diameters of the bottom will give the number of gallons for 1 inch at the bottom. Add together the results so obtained and divide by 2, and it will give the mean capacity for 1 inch of depth. For barrel-shaped tubs the rule in the Gauger's Manual for finding the capacity of a cask is applicable. Having found the capacity in gallons for 1 inch of depth, the working capacities are obtained as in the first case, and may be stated in the report of survey, dropping all fractions under three-tenths of a gallon, calling three-tenths, or any intermediate fraction to seven-tenths, one-half, and seven-tenths or upward an

entire gallon. Having found the aggregate working capacity of all the fermenters in gallons, the working capacity in bushels will be found by dividing the working capacity in gallons by the number of gallons of beer required by law to represent a bushel of grain, which is not more than 45 in sweet-mash distilleries, nor more than 60 in sour-mash distilleries, nor more than 70 in filtration-aeration distilleries. In case the distiller wishes to use a thicker mash or beer, and so states in his notice, the divisor will be proportionately less. Having found the aggregate working capacity of all the fermenters in bushels, the next step is to determine the number of bushels of grain that can be mashed and fermented in a day of 24 hours; this in a sweet-mash distillery will be taken to be one-third and in a sour-mash distillery one-fourth of the aggregate working capacity. In a filtration-aeration distillery the daily capacity in bushels will be the same as the working capacity in bushels.

The law has fixed limits within which but one fermentation can take place, to wit: Seventy-two hours for sweet-mash distilleries, 96 hours for sour-mash distilleries, and 144 hours for rum distilleries. The capacity of all distilleries will be based upon these periods, respectively.

The number of dry inches to be allowed for fermentation is a subject for the discretion of the administrator and his assistants; but as a large amount of information on this point has been received at this office, based upon examination and experience, it has been deemed advisable to fix a maximum for such allowance. In estimating the number of dry inches to be allowed, the administrator and his assistants will be governed by the depths of the tubs; but it is believed that for tubs 5 feet or less in depth 3 inches is a fair allowance where corn is used in excess of all other grains; 5 inches where corn and rye or other small grains are used in equal proportions; 7 inches where rye is used in excess of all other grains, and 10 inches where rye is used exclusively. To this allowance one-half inch may be added for each foot in excess of 5 feet, except where rye is used exclusively, in which instance 1 inch may be added for each foot in excess of 5.

Having thus found the number of bushels which can be mashed and fermented in 24 hours, the next point to be determined is what quantity of spirits can, under all the circumstances, be produced from a bushel of grain—that is, what quantity of spirits can a practical distiller, with good management, produce from a bushel of good grain; and while no fixed rule can be laid down on the subject, it may be suggested that in ordinary distilleries this varies from 3 to 4 gallons and upward, and in the best class of distilleries runs considerably over 4 gallons, averaging over $3\frac{1}{2}$ to the bushel in ordinary distilleries, about 5 gallons in the largest and best equipped distilleries, and more than $4\frac{1}{2}$ gallons to the total bushels distilled in the country.

It may be safely assumed that it would require a strong case to justify an estimate of less than from $3\frac{1}{2}$ gallons to $4\frac{1}{2}$ gallons, according to the kind of distillery under survey, and in such case the reasons for such an estimate must be fully reported to the commissioner; and in all cases where the estimate is below the average an explanation will be required. Having determined this product, multiply the number of bushels that can be fermented in 24 hours

by it, and the result will be the quantity of spirits that can be produced in 24 hours.

Sour-mash distilleries may be briefly described as those in which no fermenting agents other than spent beer or slop and barm from a tub previously set and fermented are used. The meal is mixed with the slop directly from the still and allowed to remain 24 hours, at the end of which period the mash becomes hard and sour. It is then broken up and reduced with water, and the barm added, and allowed to undergo a natural fermentation. Where the process of yeasting back is used as above described the fermentation is not so rapid or complete as in sweet-mash distilleries, where yeast is used.

A fermenting period of 96 hours (and not more than 60 gallons of beer to represent a bushel of grain) will be allowed in all sour-mash distilleries, without reference to the manner of heating, stirring, or distillation.

In the case of distilleries in which the mashing and fermenting are done in the same tubs the 24 hours used for mashing will be included in the 96 hours allowed by the statute for fermentation, and all the tubs in the distillery will be treated as fermenters and be embraced in the estimate of the capacity. Where the distiller prefers, he may set aside certain of his tubs to be used exclusively for mashing, marking them each distinctly "mash tub," and in such cases the capacity will be estimated upon the tubs used for fermenters.

The capacity of a molasses distillery is estimated upon the same principle. Having found the working capacity of the fermenters in gallons, as above stated, divide this by the number of gallons of mash which the distiller makes from a gallon of molasses, not exceeding 7 gallons of mash for a gallon of molasses, and it will give the number of gallons of molasses required to fill the fermenters, and divide the amount thus found by 6, the number of days allowed for fermentation in distilleries in which the finished product or any portion thereof is rum, and it will give the quantity which can be fermented in 24 hours. In a molasses distillery the allowance of dry inches should be the same as in a grain distillery where corn is used in excess of all other grain.

The period allowed for fermentation in determining the spirit-producing capacity of a distillery where rum is produced from molasses is 144 hours, and is computed from the time the mash is set—that is, including the day when molasses is first placed in the fermenter, although the tub may not be filled until a subsequent day.

The quantity of spirits which can be produced from a gallon of molasses varies, of course, with the completeness of the apparatus and the quality of the material, from 80 to 95 per cent—from 85 to 90 per cent probably being a fair average; and in no case should a less allowance than this average be made without first submitting a full report of the reasons therefor to the commissioner.

REPORT OF SURVEY

Reports of surveys will be made in triplicate upon Form 123 in the case of a grain or molasses distillery, one copy to be delivered to the distiller, one forwarded to the commissioner, and the other retained by the administrator. Assessments are made upon the basis

of each survey, from and including the date of delivery to the distiller. It is of the utmost importance, therefore, that the report forwarded to the commissioner should bear a certificate showing the exact date when such report of survey was delivered to the distiller and the administrator must be able to verify the fact of such delivery, and the particular day thereof.

In addition to the usual certificate showing the date of *actual delivery* of a copy of the report to the distiller it is therefore required that the officer making the delivery shall indorse on the copies of the reports respectively retained by the administrator and sent to the commissioner a certificate of service showing the date on which he delivered a copy of the report to the distiller, by handing the same to him in person, or, in his absence, by leaving it with his agent on the distillery premises, or other person in charge of the distillery; and stating that he explained to such agent or person the purport thereof.

The report of the survey of grain distilleries should embrace the estimated producing capacity for all the kinds of grain commonly used for the production of spirits, and should include an estimated capacity for both sweet mash and sour mash. The working capacity of each of the fermenting tubs, whether open or closed, must be estimated and reported in the survey.

In case any question arises as to the correctness of the survey, the administrator will forward a draft of his report to the commissioner before it is signed, in order that such questions may be determined.

The importance of these reports will be seen when it is remembered that they are the basis of assessments, and they should, therefore, be in strict conformity with the requirements of the law. The reports must be signed by the administrator or officer designated by him, as the case may be, and the designated assistant where one was employed.

If the commissioner shall at any time be satisfied that the report of the capacity of a distillery is in any respect incorrect or needs revision, he shall direct the administrator to make in like manner another survey of said distillery. There are cases, however, where, in order to prevent delay in the business of the distiller, it will be necessary for a new survey to be made without waiting for the order of the commissioner. Those cases are, where a new distillery is about to start, where new tubs are put up in an old distillery, where tubs are cut down, or where a distiller gives notice that he wishes to use a thicker or thinner beer than that upon which his last survey was based, provided the strength of beer desired to be used is within the minimum prescribed in section 3264, Revised Statutes, as amended, viz, 45 gallons for sweet mash and 60 gallons for sour mash as representing not less than 1 bushel of grain and 7 gallons as representing not less than 1 gallon of molasses.

It is important that the distinction between an amended report of survey and a report of resurvey should be clearly understood. The former is made for the purpose of correcting clerical errors occurring in a single copy of the report and takes the same date and date of delivery as the report corrected. The latter is a report of another survey of the distillery and must bear the actual dates of making and delivery.

DISTILLER'S BOND

In addition to filing a permit bond as provided by Regulations 2, the distiller must file an annual distiller's bond in accordance with section 3260, Revised Statutes. This bond will be filed on Form 30 in duplicate, with the administrator of the district upon completion of the survey and receipt of Form 123, fixing the spirit producing capacity of the distillery, and before commencing distillation, and on the 1st day of May in each succeeding year that the distiller intends to operate the distillery. The bond will be in a penal sum of not less than the amount of the tax at the nonbeverage rate on the spirits that can be distilled in the distillery during a period of 15 days, as determined by the survey, but in no case shall the penal sum of the bond exceed \$100,000.

Upon compliance with the requirements and provisions of section 318 of Regulations 2, the permit bond of the distiller may constitute the security for the distiller's bond on Form 30, and such bond may be given without additional surety as the distiller's own obligation secured by the permit bond. In the execution of bond on Form 30 without additional surety, proper reference must be made in the bond to the permit bond as surety therefor.

Bonds on Form 30 will expire on April 30 of each year and must be renewed by the filing of a new bond on May 1 of each year, as provided above.

The following instructions should be particularly observed and complied with in executing the bonds.

The full names of individual principals and the residence of each must be legibly written, preferably typed, in the heading of the bond. In the case of a copartnership the trade name of the firm must be given. In the case of a corporate principal the bond must show the name of the State under which organized and the location of the principal office or place of business of such corporation.

The full names of the individuals must be signed to the bond, written exactly as in the heading thereof. In case of a copartnership the firm name must be signed by a partner authorized to do so, followed by the signature of such partner. In case of a corporation the corporate name must be written, followed by the signature and title of the officer duly authorized to sign for the corporation, together with the impression of the corporate seal, if any.

The signature of each principal must be made under seal and have two witnesses, who must sign their names as such. Witnesses are not, however, required for the attestation of officers signing bonds in behalf of corporations in cases where the seal of the corporation is affixed.

Bonds in which alterations and erasures occur before execution must have placed upon them a statement by the principal before execution that such alterations or erasures were made prior to the execution of the bond. If such alterations or erasures were made after the bond was executed, the formal consent of all parties thereto must be written in the bond.

Upon receipt of the bond the administrator will examine it to see that it is correctly executed and in a sufficient penal sum. If the

administrator is satisfied with the bond he will note his approval on both copies of the bond, retain one copy in his office and forward the other copy to the commissioner.

POWER OF ADMINISTRATORS TO REFUSE TO APPROVE DISTILLERS' BONDS

Pursuant to the provisions of section 3260, Revised Statutes, the administrator may refuse to approve any distiller's bond when, in his judgment, the situation of the distillery is such as would enable the distiller to defraud the United States; and in case of such refusal the distiller may appeal to the commissioner, whose decision in the matter shall be final.

Section 67 of the act of August 28, 1894 (sec. 3260a, Int. Rev. Comp. of 1911), reads as follows:

That whenever any person intending to commence or to continue the business of a distiller shall execute a bond under the provisions of section thirty-two hundred and sixty of the Revised Statutes of the United States, and file the same with the collector of internal revenue for the district in which he proposes to distill, the collector may refuse to approve said bond if the person offering the same shall have been previously convicted, in a court of competent jurisdiction, of any fraudulent noncompliance with any of the provisions of law relating to the duties and business of distillers, or if the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall have compromised such an offense with the person upon the payment of penalties or otherwise, and, in case of such refusal, the person so proposing to distill may appeal to the Commissioner of Internal Revenue, whose decision in the matter shall be final.

Under these provisions of law administrators may refuse to approve the bond of a distiller, not only when the situation of the distillery is such as would enable the distiller to defraud the United States, but also if the person offering such a bond shall have been previously convicted in a court of competent jurisdiction of any fraudulent noncompliance with any of the provisions of law relating to the duties and business of a distiller, or if, with the approval of the Secretary of the Treasury, there shall have been compromised such an offense with the person upon the payment of penalties or otherwise.

It is apparent that the purpose of the section in thus enlarging the powers of the administrators is to prevent persons who shall have been convicted of offenses against the internal revenue laws, or who shall have compromised such offenses, from again qualifying to engage in business as distillers, and administrators will be expected to so exercise this power as to give full force and effect to this evident purpose and intent.

When an appeal is taken to the commissioner the administrators will furnish full information in the one case as to the situation of the distillery and as to how and why the situation will enable the distiller to defraud the United States, and in the other case as to the nature of the offense, giving date of conviction or of acceptance of compromise, with his reasons for refusing to approve the bond.

LEASEHOLDER'S BOND

Where the distiller is the owner of the distillery or distilling apparatus, erected prior to July 20, 1868, but has only an estate for a term

of years or other estate less than fee simple in the lot or tract of land under a lease or other evidence of title *recorded before July 20, 1868*; or in like case, where the lease or other evidence of title was not required by the laws of the State to be recorded in order to render it valid; or where the title was on July 20, 1868, and has continued to be, in litigation; or where there was a mortgage duly recorded prior to that date which is not due; or where the fee is held by a *femme covert*, minor, person of unsound mind, or other person incapable of giving consent as required in section 3262, *the distillery or distilling apparatus having also been erected prior to that date*; the distiller may, in lieu of the consent and stipulation aforesaid, give an additional bond on Form No. 3, with not less than two sureties, residents of the district or county or an adjoining county in the same State in which the distillery is situated, and owners of unencumbered real estate in said district or county or adjoining county equal to the penal sum of the bond. A duly authorized corporation may, however, be accepted as sole surety on such bonds, and in such case the bond will be executed in duplicate, one copy to be filed in the administrator's office and the other forwarded to the commissioner. A personal bond with Liberty or other United States bonds as collateral may be given, as provided by section 1126 of the act of February 26, 1926, if desired.

In such case the administrator will cause the value of the lot or tract of land, together with the buildings and distilling apparatus, to be appraised by two or more competent persons to be designated by him, and the said appraisal may be increased by the administrator if in his judgment the same is too low, and the penal sum of said bond must be equal to such appraised value. This is in addition to the distiller's bond required by section 3260, Revised Statutes, and a substitute for the ownership in fee of the distillery premises.

Any person desiring to avail himself of the provisions of section 3262 must make application to the commissioner, showing, in case of a lease, that there was a valid subsisting and duly recorded lease, prior to July 20, 1868, under which he holds; and if not recorded, that the same was not required to be recorded by the laws of the State; if the title is in litigation, in what court the proceedings are pending, the parties thereto, and the nature of their claims, and that such litigation was pending July 20, 1868; if a mortgage, the date and amount of the same, when recorded, by whom held, and when the same is due; and in case of incapacity to consent, the nature of said incapacity. In all cases a full and clear statement of the title to the estate should be given, and such application should have indorsed thereon the certificate of the administrator of the district that he has personally investigated the case and finds that the statements made are correct.

Section 3262, Revised Statutes, as amended by the act of May 28, 1880, provides for the acceptance of a leaseholder's bond in case of the increase of distillery premises whereon a distillery had been erected prior to July 20, 1868, by the addition of land or buildings adjacent or contiguous thereto not owned by the distiller himself in fee.

The amount of bond is, however, dependent upon certain conditions:

If the distillery be one which the distiller owns himself in fee, or in respect to which he has procured the written consent of the owner in fee, or incumbrancer, the bond is to be only for the appraised value of the addition to the premises.

But if the distillery be one which the distiller is entitled to operate under a leaseholder's bond, then the bond is required to be given for the appraised value of the whole distillery as increased by such addition.

It is not essential for the acceptance of such bond in lieu of written consent, in either of these cases, that the owner or owners of the addition to the premises should be legally incapable of giving consent, but it is absolutely required that the distillery shall have been erected prior to July 20, 1868.

Personal sureties on such bonds must be required to justify on Form 33 in unencumbered real estate, in the same district or county or adjoining county in the same State in which the distillery is situated, equal in value to the penal sum of the bond.

Pursuant to the provisions of section 3262, Revised Statutes, in case of any distillery sold at judicial or other sale in favor of the United States, a bond may be taken, at the discretion of the commissioner, in lieu of the written consent required by this section, and the person giving such bond may be allowed to operate such distillery during the existence of the right of redemption from such sale on complying with all the other provisions of law.

DISTILLERY WAREHOUSES

The law, section 3271, Revised Statutes, requires every distiller to provide, at his own expense, a warehouse suitable for the storage of distilled spirits, which must be situated on and constitute a part of his distillery premises. No dwelling house can be used for such purpose, and no door, window, or other opening can be made or permitted in the walls of such warehouse leading into the distillery, or into any other room or building. A portion of the distillery may be used as a warehouse, but in such case it must be separated from the portion used for distilling by a solid, unbroken partition; and administrators will, when such warehouse is applied for, make careful examination as to the sufficiency of the division wall. If such warehouse is a separate building it must be upon the premises actually occupied as the distillery. It must be a portion of the distillery building or a separate building on the distillery premises.

A room or building to be approved as a warehouse for the storage of distilled spirits shall be of substantial wood, brick, concrete, or other material and shall be so constructed as to render it impossible to be entered in the absence of the storekeeper-gauger without such violence as to render the entry easy of detection. Slat warehouses or warehouses constructed of thin or flimsy wooden sheathing will not be approved. A warehouse must have a suitable floor of wood, concrete, or brick, proper lighting facilities and no more doors than are necessary in the proper and convenient conduct of the distiller's business. The doors and other openings must lead into the public street or into the distillery yard. Distillery warehouses will not be

approved unless erected upon stone, brick, or concrete foundations extending into the ground. Iron grated or iron barred openings for ventilation or heating will be allowed in foundation walls and floors.

All doors must be of substantial construction of heavy timber or iron, or other substantial material. The hasp and staple or bolt to which the Government lock is affixed must be securely fastened on the inside. All doors but the one bearing the Government seal lock must be securely barred inside, and for this purpose a crossbar must be provided, placed in the middle of the door and so secured that it can not be turned from the outside. Strong and suitable attachments must be provided inside the warehouse for Government locks (not seal locks) in addition to the crossbars. Such locks will be affixed and the keys will remain in the possession of the storekeeper-gauger in charge. In addition, where there are double doors, one of them, at least, must be provided in the middle with substantial bolts at both the top and the bottom. These bolts must be arranged so as to plunge into substantial fastenings or holes in the frame of the door. The hinges to the doors and shutters must be secured by round-headed or carriage bolts, to be nutted and riveted or battered. Hinges that can not be thus riveted should be so attached that they can not be removed when the doors or windows are closed, rendering them inaccessible from the outside.

The windows on the first floor and basement floor, if within 10 feet of the ground or an adjacent roof, must be secured by iron bars and shutters substantially constructed of iron or wood, or, in the place of solid shutters, the windows may be of small (approximately 12 by 18 inches), wire glass panes, or wire reinforced glass in metal sash. The administrator may, in his discretion, require other windows to be protected by iron bars or shutters or both. Where iron bars are required they must be placed perpendicularly in the windows and the bars must be not less than three-quarters of an inch in diameter and be placed not more than 5 inches apart and be reinforced by crossbars not less than 36 inches apart. These bars or gratings must be so fastened to the window frames, or imbedded in the walls, as to afford proper security. The shutters must be fastened inside and be so secured that they can not be opened from the outside, and all window sashes must be provided with sash locks or other suitable fastenings. Skylights will be regarded as windows and treated as such in the construction of warehouses and must be protected by suitable iron bars.

All warehouses heretofore constructed must be made, so far as practicable and as soon as possible, to conform to these requirements, and those hereafter constructed must be in conformity herewith.

Obviously there may be details and methods of construction not covered hereby, but in any departure from the methods prescribed the same security and protection to the spirits in warehouse must be afforded, and where any doubt prevails in regard thereto, the matter should be referred to the commissioner.

After a warehouse has been provided on distillery premises as above set forth, written application must be made to the administrator of the district in which the distillery is situated for approval. The application must accurately describe in every detail the construction of the warehouse and the method of securing the doors

and windows so as to show that all the foregoing and other requirements have been observed, the same to be verified by the administrator's certificate of examination.

The application for approval must, in all cases, give the name or names of those who are to operate the distillery, and, if a company, the firm name of the company as well as the individual names, and if a corporation the corporate name only, the number of the distillery, and the precise location of the distillery premises, the material of which the warehouse is constructed, the size of warehouse in width, length, and height, in feet and fractions, and number of rooms, describing particularly all the openings and connections. If of rack construction, that fact should be stated. And such applications must be accompanied by a sketch or diagram accurately representing the warehouse, with all its connections, openings, and surroundings, and also showing all other warehouses on the premises, if any, with dimensions and date of approval of each.

The application for approval of a distillery warehouse should be made in the following form:

To _____:

Prohibition Administrator, _____ District.

Sir: The undersigned, _____, doing business under the name or style of _____, hereby makes application for the approval of a distillery warehouse, which he has provided as required by law, situated upon and constituting a part of _____ distillery premises distillery No. _____, at _____, in the county of _____ and State of _____. Said distillery warehouse is constructed of _____.

(Here describe accurately the building or room proposed, as to size, stating the height, width, and depth; when a whole building, the number of stories and height of each story, and when a room an exact description of the building in which it is situated, and its precise location therein, and in every case describe all the openings, connections, and surroundings, and the materials of which constructed.)

_____, *Distiller.*

Upon the receipt of the application and diagram the administrator will, himself or by one of his officers, make a careful examination of the premises proposed, and if they are found to be in conformity with the requirements of law and regulations, and properly set forth in the application and diagram, will at once transmit the application and diagram to the commissioner, accompanied by a certified report of his examination, giving the estimated storage capacity of the warehouse, in barrels stored three tiers high on each floor, or according to the rack system if that be used, and the means provided for securing the safe custody of the spirits.

The administrator's report and recommendation may be in the following form, viz:

I hereby certify that the premises described in the foregoing application for the approval of a distillery warehouse for the storage of distilled spirits to be produced by the applicant, _____, of distillery No. _____, in the _____ administrative district, have been duly examined by _____, and found to be in every respect as set forth in said application and the diagram hereto attached;

that the said premises are in strict compliance with all the requirements of law and regulations; and I estimate the storage capacity thereof at — barrels. I therefore recommend the approval of said warehouse.

Administrator, — District.

At the time of transmitting the application and his report thereon to this office the administrator should in all cases recommend some qualified storekeeper-gauger for assignment to the warehouse as soon as the same shall be approved.

Applications for the approval of distillery warehouses can not be granted until a certified copy of the distiller's notice to the administrator, on Form 27a, and the plan and survey of the distillery have been received at this office and found to be correct.

Should distillers have occasion to extend their distillery premises by adding thereto land immediately adjoining or erecting additional buildings thereon to be used in connection with their business of distilling or for the storage of their spirits in bond, a new notice on Form 27a must be given accordingly; and if additions to distillery warehouses are desired, applications for the approval of the same must be made and forwarded to this office in the same manner and with the same formalities as in the case of original warehouses.

CONTROL OF WAREHOUSE

Pursuant to the provisions of section 3271, Revised Statutes, the distillery warehouse shall be under the direction and control of the administrator of the district and in charge of a storekeeper-gauger, and section 3274, Revised Statutes, places such warehouse in the joint custody of the storekeeper-gauger and the proprietors thereof. The distiller shall on demand at reasonable times have admittance, in the presence of the storekeeper-gauger, to the warehouse and the spirits deposited therein, and may, in connection with the storekeeper-gauger, refuse admittance to any person not a prohibition officer. The only lock to the warehouse door must be the Government lock, the key of which must at all times be in charge of the storekeeper-gauger.

Distillers may have access to the spirits in bond at any time, in the presence of the storekeeper-gauger, for the purpose of repairing cooperage, or to take any required measures to prevent waste by leakage, or for other necessary purposes. The warehouse must never be opened or left open except in the presence of the storekeeper-gauger.

The constant personal presence of the officer at or in the warehouse will not hereafter be insisted on, provided the officer exercises a careful supervision of the warehouse and its contents by remaining therein when other duties permit, and when necessarily called to other portions of the distillery premises by returning to the warehouse at such brief intervals as shall enable him to keep practically a continuous oversight of the operations of the distiller or other persons having business in the warehouse.

Where the distillery warehouse consists of several buildings and it is necessary for the distiller to have access to two or more of them at the same time a like application of this regulation with respect to the personal presence of the storekeeper-gauger or storekeeper-

gaugers at or in the open warehouses should be made, and the officer should exercise the same supervision of the warehouses and their contents as above recited in case of a single building.

It will be understood, however, that there is no intention to modify the rule requiring the immediate personal presence of the storekeeper-gauger when spirits are being entered or withdrawn, nor to relax in any manner that strict and proper oversight of distillery warehouses which it is the manifest intention of the law to have maintained. Officers charged with the care of such warehouses will be expected and required to exercise good sense, care, and diligence in the discharge of their duties in this respect.

DISCONTINUANCE OF WAREHOUSE

When a distiller who has given notice of suspension has withdrawn all the spirits from his distillery warehouse, the administrator of the district is thereupon required to promptly report these facts to this office, giving the date of the last withdrawal, and also to recommend revocation of assignment of the storekeeper-gauger, and, unless operations are to be resumed at the distillery by the same distiller in a reasonably short time, discontinuance of the warehouse should also be recommended.

Section 3272, Revised Statutes, provides that—

Whenever in the opinion of the Commissioner of Internal Revenue any distillery or other warehouse is unsafe or unfit for use, or the merchandise therein is for any reason liable to loss or great wastage, he may discontinue such warehouse and require the merchandise therein to be transferred to such other warehouse as he may designate and within such time as he may prescribe. Such transfer shall be made under the supervision of the collector, or of such other officer as may be designated by the commissioner, and the expense thereof shall be paid by the owner of the merchandise. Whenever the owner of such merchandise fails to make such transfer within the time prescribed, or to pay the just and proper expense of such transfer, as ascertained and determined by the commissioner, such merchandise may be seized and sold by the collector in the same manner as goods are sold upon distraint for taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the costs and expenses of such sale and removal, and the balance paid over to the owner of such merchandise.

Section 57 of the act of August 28, 1894, provides that—

Whenever distilling shall have been suspended at any distillery for a period or periods aggregating six months during any calendar year, and the quantity of spirits remaining in the distillery warehouse does not exceed five thousand proof gallons, or whenever, in the opinion of the Commissioner of Internal Revenue, any distillery warehouse or general bonded warehouse is unsafe or unfit for use, or the merchandise therein is liable to loss or great wastage, he may in either such case discontinue such warehouse and require the merchandise therein to be transferred to such other warehouse as he may designate, and within such time as he may prescribe; and all the provisions of section thirty-two hundred and seventy-two of the Revised Statutes of the United States relating to transfers of spirits from warehouses, including those imposing penalties, are hereby made applicable to transfers to or from general bonded warehouses established under this act.

Transfers of spirits from distillery or other warehouses under the foregoing provisions of law will be made to other bonded warehouses, pursuant to the provisions of Article 12, Regulations No. 2, and will be made upon the recommendation of the administrator, who will

report the facts fully in each case to the commissioner, and will also recommend transfer to the most convenient and accessible warehouses.

ASSIGNMENT OF STOREKEEPER-GAUGERS

One or more storekeeper-gaugers must be assigned to, and on duty at, each distillery warehouse before the distiller can commence operations.

The commissioner is alone authorized by law to assign storekeeper-gaugers to duty and revoke their assignments.

Administrators of districts are required to nominate storekeeper-gaugers for assignment to warehouses in time to prevent unnecessary and vexatious delays to the proprietors; but in no case will such nominations be made to take effect prior to the date operations are actually to be commenced at the distillery, nor will such officers be placed on duty prior to that date. In determining the number of storekeeper-gaugers to be assigned to each distillery warehouse, the administrator will take into account the construction and condition of the warehouse and distillery as to their security against theft and fire or other casualties, the location thereof, the character of the community in which situated, the facilities for illicitly distilling and disposing of the spirits, the capacity of the distillery, and length of time it is operated each day. In each case of a new warehouse the nomination or nominations should accompany the application for the approval of the same.

The storekeeper-gauger will have charge of the warehouse to which he may be assigned, under direction of the administrator controlling the same. The warehouse will be in the joint custody of the storekeeper-gauger and the proprietor thereof, and kept securely locked. The storekeeper-gauger will retain the key of the Government lock, and will not permit the same at any time to go into the possession of any other person or officer, except the administrator or some officer designated by the administrator or by this office, in pursuance of law, to take his place; and the warehouse must at no time be unlocked or remain open unless in the presence of the storekeeper-gauger.

In case of the absence of any storekeeper-gauger, by reason of sickness or from any other cause, the administrator having control of the warehouse, if no other storekeeper-gauger is available for assignment, may designate a competent officer attached to his office to have temporary charge of such warehouse, who shall, during such absence, perform the duties and be subject to all the liabilities of the storekeeper-gauger for the time such officer may be so employed. But this power of administrators to make temporary designations is limited to filling vacancies occasioned by the absence of regularly assigned storekeeper-gaugers and they are not authorized to make such a designation where there is not an existing assignment by the commissioner. In cases of death, where distillers would be obliged to suspend operation before a regular appointment and assignment could be made, administrators may designate temporary storekeeper-gaugers. But such a designation as is above provided should not be allowed to continue beyond the shortest period requisite to perfect a regular assignment through this office, or, when necessary, to have an officer duly appointed and commissioned for that purpose.

Where it is found necessary, because of an emergency, to designate an officer attached to his office to act in the capacity of storekeeper-gauger at a distillery where there is no existing assignment by the commissioner, and a temporary appointment by the Secretary is necessary, the administrator will immediately after placing such person on duty report his action to this office *by letter and also on Form No. 241*, in order that the proper action may be taken.

Administrators will give immediate notice of such designations on Form 241.

Storekeeper-gaugers being under the immediate direction and supervision of administrators, administrators are required to furnish this office promptly with all necessary information touching their assignment to, relief from, and the manner in which they perform their duties.

In all cases where the circumstances and interests of the service will permit, it is preferable that changes in the assignments of storekeeper-gaugers should be so made that their terms of service at each warehouse may commence and end with the beginning and close of the month, so that each month's account of a warehouse may be made in full by one storekeeper-gauger.

Administrators may require regularly assigned storekeeper-gaugers to remain on duty on Sundays and Sunday nights whenever in their opinion it is necessary to protect the interests of the Government. Administrators ordering storekeeper-gaugers to duty on Sunday should do so in writing, stating the reasons therefor.

Administrators are required to report promptly to this office the day when each storekeeper-gauger in their respective districts begins and ceases duty under each assignment, and each case where they order storekeeper-gaugers to duty on Sundays or Sunday nights; and neglect of these requirements should be carefully avoided.

Administrators are required to report promptly to this office whenever a distillery suspends operations, and where night or additional storekeeper-gaugers are under assignment to the warehouse thereto attached, they will be considered relieved from duty as of the date on which the suspension takes place, unless reasons are given for retaining them on duty. In determining whether night storekeeper-gaugers should remain on duty during suspensions, administrators will be governed by the same conditions as are herein prescribed for determining the number of storekeeper-gaugers required at each warehouse upon commencing business, and be held in like manner responsible for their retention whenever their presence is necessary.

A sufficient number of storekeeper-gaugers will be provided to enable a distiller to properly conduct his business, and so that the bonded warehouse may be open during the business hours of the day when it is necessary for the distiller to enter. It is not believed, however, that it will be necessary, except in rare instances, for the distiller or the owner of the spirits to enter the warehouse after the working hours of the day.

It should be borne in mind that the storekeeper-gauger is in no sense a watchman in the interest of the distiller or the owner of the spirits. The storekeeper-gauger is placed in charge of these premises solely in the interest of the Government. Administrators will be careful, therefore, not to recommend the assignment of a night

storekeeper-gauger at a suspended distillery unless there are some special reasons which require his presence there in the interest of the Government, or where it would be unfair or unjust to the taxpayer to dispense with his presence.

Administrators will be careful to impress upon taxpayers two things:

First, that a night storekeeper-gauger will not be assigned to duty at a warehouse during the suspension of the distillery simply as a guard or watchman in the interest of the distiller; and, second, that this office will not decline to assign storekeeper-gaugers at such distilleries where the presence of a storekeeper-gauger might be necessary to prevent injury or loss to the taxpayer, which the taxpayer could not protect himself against by the use of reasonable care.

Whenever an administrator shall deem it advisable that a night storekeeper-gauger should be assigned to duty at a bonded warehouse during the suspension of the distillery, he will furnish to this office a full and complete statement of all the facts involved, and his reasons in detail in regard to the same.

Whenever any distillery premises are seized, together with the spirits in the distillery warehouse, the storekeeper-gauger or storekeeper-gaugers must be considered as relieved from duty under his or their assignment after the date of the seizure and during its continuance.

All recommendations for assignments, revocation of assignments, and transfer of storekeeper-gaugers will be made on Form 241, heretofore prescribed.

DUTIES OF STOREKEEPER-GAUGERS

Storekeeper-gaugers are required to be present at their places of duty during the periods for which they are assigned. Those assigned to day duty are required to be present at the place of duty during all the hours of the day, and night storekeeper-gaugers during all the hours of the night, whether the distilleries are operated or not. Where both day and night storekeeper-gaugers are assigned, neither should leave the place of duty until duly relieved by other officers. Where the distillery is operated, or the warehouse is required to be open, more than 8 hours daily, assignments shall be made, if possible, so that no officer shall be on duty to exceed 8 hours in every 24.

Storekeeper-gaugers are required to be on duty and in daily attendance at the warehouses to which they are respectively assigned; and where a distillery is under suspension, and all spirits are withdrawn from the warehouse, the administrator will require the storekeeper-gauger to report the fact of the withdrawal of the last spirits on the day on which it occurs, and the storekeeper-gauger will be considered as relieved from duty at the close of that day. Administrators are required to report all such cases promptly to this office, giving the date of the last withdrawal in each case. The last withdrawal of spirits is not considered complete until the spirits are all actually removed from warehouse and the tax paid or export stamps all affixed; and the date herein required to be given is that on which the withdrawal is so completed.

If the interests of the Government require the presence of a storekeeper-gauger at a distillery during the hours of night, the same interests certainly demand that he shall know what transpires at the distillery during all the hours of his assignment, *and the same degree of vigilance is expected from storekeeper-gaugers assigned to night duty as is required of those on duty during the day.*

For absence from the distillery during the hours for which he is assigned the officer is liable to summary removal from office, and to fine and imprisonment if the neglect to perform his duty be willful or fraudulent. No excuse, short of absolute necessity, is receivable for the offense.

The special attention of officers and distillers is directed to the penalties imposed in section 3284, Revised Statutes, for mashing, distilling, or removing spirits in the absence of the storekeeper-gauger or person designated to act as storekeeper-gauger. Any mashing or distilling at any time when the storekeeper-gauger is not present is prohibited.

The storekeeper-gauger assigned to any distillery warehouse has charge, by express provisions of law, both of the warehouse and of the distillery, under the direction of the administrator.

It is his official duty, for the due discharge of which he is held responsible, to see that the distillery is in full accordance with law, both in its construction and in its operations; that true and complete records and reports are made by the distiller and by himself as by law and regulations required; and that the entire product of the distillery is entered into warehouse and only withdrawn therefrom according to law. He must take the weight and measure of all material received upon the distillery premises, and will not allow any to be stored thereon without first complying with this requirement and making the proper entries of the same in the appropriate book of accounts.

The storekeeper-gauger must ascertain and record the weight and measure of all material to be used in mash before allowing it to be put into the mash tubs.

The absence of scales and other facilities for determining the weight and measure will not be received as sufficient excuse for not performing this duty, unless the official files shall show that the storekeeper-gauger has reported their absence and taken all reasonable steps to have them furnished.

Where the scales are set for weighing off the meal put into the mash tub, it is the storekeeper-gauger's duty from time to time to test their accuracy, and any want of accuracy should be immediately reported to the administrator. The use of material in the mash tub without weight and measure, or the existence of facilities for crowding or thickening the mash without the knowledge of the storekeeper-gauger will, upon being ascertained, be considered sufficient grounds for dismissal, unless the official record shows that such use and such facilities have been reported by him in writing to the administrator.

Every storekeeper-gauger must make himself thoroughly conversant with the distillery premises and all the apparatus used in the business of distillation, examine the plan and survey in the office of

the distillers, and carefully note whether the facts are accurately set forth therein.

He is to note carefully the character and condition of all connections, pipes, tubs, or vessels used for conducting spirits in the course of their distillation, to see if they are continuous and closed, as required, and if the distiller can have any access to the spirits while in transit, and report at once any condition of the apparatus not in accordance with requirements.

He will see that the cistern room is constructed as required in instructions headed "Cistern room," page 13, and will also note the condition of the warehouse, and see that it is a suitable and secure place for the storage of spirits, and promptly report any lack of security to the administrator.

He is required to be present at the drawing of all spirits from the receiving cisterns, and at the gauging, marking, branding, and stamping of all packages of spirits put up on the distillery premises, and is held jointly responsible with the gauging officer that all the mechanical duties connected therewith are faithfully performed.

The storekeeper-gauger will see that all spirits, the manufacture of which is completed each day, are conveyed to the receiving cisterns on the same day; and he will not change the flow of spirits into another receiving cistern until the spirits belonging to a given day have been run into its appropriate cistern.

Storekeeper-gaugers will bear in mind that the serial numbers must commence with number one (No. 1) on the first cask deposited, taking special care that no two casks warehoused at the same distillery be marked with the same serial number.

A change in the person or persons operating a distillery will not be taken to require a new series of numbers for the packages of distilled spirits thereafter produced and warehoused at such distillery; but the established series will be continued without regard to a change in persons.

The warehouse and its contents should receive the storekeeper-gauger's utmost care and attention. He should require that it be kept in good and safe condition, and that the spirits stored therein be not liable to loss or wastage.

If there is any violation of law or irregularity on the part of the distiller, the storekeeper-gauger must make immediate report of the same to the administrator and to the commissioner, and for any neglect to do so he will be dismissed.

The position of storekeeper-gauger is one of special confidence and trust, and the faithful discharge of the duties pertaining thereto will entitle the officer to the favorable consideration of this office. No officer can be said to faithfully discharge his duties who is found absent from his post during the assigned hours, nor who fails in accomplishing the purposes of his appointment; and it is expected that the services rendered will, in every instance, be of a character which will commend the officer to confidence.

STOREKEEPER-GAUGERS' DISTILLERY RECORDS

Storekeeper-gaugers are required to keep the following records:
Record No. 17, of storekeeper-gaugers at registered distilleries, in which entries will be made according to printed instructions on the

inside page of the cover and as indicated by the headings of the proper columns.

Storekeeper-gaugers will note on some portion of this record not otherwise used the removal of fusel oil and distilled water. The monthly report on Form 88 should be made from this record. Book No. 16 will be used for this record at rum distilleries.

Record No. 17½ will be kept as a supplement to and as a part of No. 17 at those distilleries where materials are purchased or received from so large a number of persons each day that an itemized account can not be kept on No. 17. In such cases only the total quantity purchased or received each day will be entered in No. 17, and in the column "Purchased from" will be entered the pages of No. 17½ containing the items from which the totals are obtained.

Storekeeper-gaugers coming on duty at a distillery where work is being resumed after suspension are required to make an entry in Record No. 17 of all repairs made on the distillery or distillery premises, and of all the material received thereon during the period in which work was suspended thereat. Distillers will be required to afford all the facilities in their power to enable storekeeper-gaugers to make the proper entries of these facts.

The temperature and gravity of the beer must be permanently recorded in the proper columns on No. 17 and also on Form 88 immediately after the readings.

The entries of dry inches and quantities of mash in each fermenter must be made by the storekeeper-gauger from actual measurements, and if any fermenter is emptied before the end of the fermenting period he must see that it is not again filled during that period, and any irregularity on the part of the distiller in this respect must be forthwith reported to the administrator and to the commissioner.

STOREKEEPER-GAUGERS' DISTILLERY REPORT

Storekeeper-gaugers will, on or before the fifth day of each succeeding month, make monthly abstract in duplicate on Form 88, and the following instructions must be literally complied with in each and every case:

The storekeeper-gauger at each distillery must, at the first of the month, take an accurate account of the materials on hand and report the same on Form 88, opposite "On hand first of month," in the "Account of materials," being careful to note each kind of material separately, in pounds and bushels, or in gallons, or both, as the case may be.

He will keep an accurate record of all materials received during the month, and enter the total quantity of each kind of material so received opposite "Received into distillery or on distillery premises during month."

These last items, added to the quantity on hand at first of month, will form the total to be entered opposite the first "Total."

Opposite "Used during the month" the storekeeper-gauger will enter the total quantity of each kind of material actually put in mash during the month.

Opposite "Allowed for waste" he will enter the total waste found by actual measurement, and any loss not due to handling or exceeding 2 per cent of grain used must be explained.

Opposite "Transferred from distillery or distillery premises for purposes other than distillation" he will enter the kind and quantity of distilling material removed from the distillery premises for purposes other than distillation.

He will take account of and enter, "On hand last of month," the total quantity of each kind of material on the distillery premises and not in mash, after the close of business on the last day of the month.

The entries to be made opposite the second "Total" will be the totals of the four preceding items.

In the "Account of spirits," storekeeper-gaugers will enter opposite the date of each working day the quantity of spirits produced—that is, run into the cistern room before midnight of that day—as shown by subsequent inspection of same, and also the quantity gauged and removed to warehouse or removed by pipe line direct to denaturing warehouse that day.

The entries in the "Beer account," "Material account," and "Summary of spirits" on the lower portion of the return will be made as indicated by the respective blanks.

Storekeeper-gaugers at distilleries where spirits undergoing various processes of manufacture are held outside the cistern room will make a statement of the same as required by the blanks and instructions on Form 88, revised, under the heading "Statement of spirits distilled, but not run into cistern room at end of month."

It is the duty of the storekeeper-gauger to know that all entries and reports made by him are correct. He has no right to estimate, or to trust to the information received from the distiller, or anyone in his employ. He is placed on duty, not to receive and record the reports of the distiller or his employees, but to keep a record of transactions of which he is required to have a personal knowledge. The quantity of beer in a tub at the time it is emptied is not the subject of an estimate, but is to be determined by actual measurement; and the quantity made and used during the month, or on hand at its close, can and must be determined in the same way; and the entries upon the Form 88 will be taken as his official certificate that the quantities there entered are literally correct.

In filling up "Form 88" the storekeeper-gauger will enter, under the head "At time tubs are filled," the number of each tub filled, taking one line for each tub, and under the heading "Date," he will enter the day of the month, and under the heading "Hour," he will enter the exact hour and minute, a. m. or p. m., when the filling of the tub begins, or when the tub is actually full, as the distiller may elect. The distiller may adopt either time as the beginning of his fermenting period, but no change will be permitted without notice to the administrator on Form 27a.

The storekeeper-gaugers will enter upon Book No. 17, and also upon each Form 88, that the fermenting period begins "When filling of tub begins," or "When tub is full," as the case may be, and will note the hour and minute accordingly.

In filling the columns under the headings "At time tubs are emptied," storekeeper-gaugers will be particular to record the exact hour and minute at which each fermenting tub is actually empty. The fermenting period will be noted on Form 88.

In molasses distilleries where rum is produced, and the tubs are set, fed, and filled as is usual in making what is known as "New England rum," the time the first material is put into any tub will be entered on Form 88 as the time such tub was filled.

In making entries or corrections storekeeper-gaugers will follow the printed instructions on Form 88.

These forms will be carefully examined at this office, and any irregularity on the part of the distiller or carelessness on the part of the storekeeper-gauger will be dealt with as provided by law.

TRANSFER OF STOREKEEPER-GAUGERS

All storekeeper-gaugers assigned to distillery and other bonded warehouses will be changed at such times as, in the opinion of the administrator or commissioner, shall promote the best interests of the service. These changes in assignment will be made by the commissioner upon the recommendation of the administrator.

All necessary transfers from one district to another will be made by the commissioner upon the joint recommendation of the administrators of the two districts.

SACCHAROMETERS

For use in taking temperature and gravity of beer, distillers are required to furnish, at their own expense, standard stems graduated to tenths of a per cent, vessels in which to take samples, and a cylinder or cup to hold the strained samples.

DISTILLER'S BOOKS

Every distiller (sec. 3303, Rev. Stat.) is required to make true and exact entry daily, in books to be kept for that purpose, in the form and manner set forth in Forms Nos. 12, 13, 25, and 28, heretofore prescribed, of all matters therein contained. No materials of a kind for which a special column is provided in Form No. 13 should be entered under the head of other materials, and in Form No. 12 every kind of material purchased must be specified.

Distillers who have given the required bond as such, and who sell only distilled spirits of their own production at the place of manufacture in the original cask or package to which the tax stamp is affixed, are exempt from paying special tax as wholesale liquor dealers, but are nevertheless required to keep wholesale dealer's book, Form 52, and to enter therein all spirits as received when the tax is paid thereon, and when sent out, to whom sent, etc.

DISTILLER'S MONTHLY ACCOUNT

Under the provisions of section 3307, Revised Statutes, every distiller is required on the first day of the month, or within five days thereafter, to render to the administrator an account in duplicate of

the materials used and of the spirits produced and warehoused during the preceding month. This return will be rendered on Form 14. The return is to be taken from the distiller's books, and in making up said return he will enter the number of pounds of each kind of material used each day in the proper column. In the column of "Bushels" he will enter the number of bushels and fractions of bushels, found by dividing the number of pounds by 56, that being the number of pounds provided by law to represent a bushel. Should there be any fraction of a bushel in excess of even bushels, that fraction will be entered on Form 14 as so many fifty-sixths, and never in decimal fractions. Under the head of "Total" will be entered the total of all the columns; and in the column, "Spirits distilled and placed in warehouse" he will enter the number of packages, the wine and proof gallons, giving the actual inspection, and not taxable gallons. Each package need not be reported separately, but the number of packages entered each day may be reported in total. In filling up the affidavit the distiller will enter in the blank prepared for the purpose the dates of the first and last days included in the last preceding return.

The return, when rendered by an individual, must be signed by the distiller in person, or in his name, by his authorized agent or attorney. In case of a firm, the signature must be made in the firm name by a member of the firm, or by some person duly authorized as above.

In case of a corporation the signature will be made in the name and under the seal of the corporation by the authorized officer thereof, or by some person duly authorized by resolution or otherwise.

Each return must be verified under oath or affirmation by the distiller or the principal manager of the distillery; the oath of a clerk or other employee is not sufficient.

Upon the receipt of the return the administrator should satisfy himself, by examination of the books and premises, in person or by one of his officers, of the accuracy of the entries made, and will then transmit one copy to the Commissioner. (See art. 30, Regulations No. 30, as to record and return of spirits transferred to be denatured direct to denaturing warehouse or to tank in distillery warehouse.)

COMMENCEMENT OF WORK

The opening paragraph of section 3310 of the Revised Statutes, as amended by section 7 of the act of May 23, 1880, provides that the first fermenting period of every distiller shall be taken to begin on the day the distiller's bond is approved; and every distiller at the hour of 12 meridian on the last day of such first fermenting period, or at the same hour on any previous day of such fermenting period on which spirits are distilled, shall be deemed to have commenced and thereafter to be continuously engaged in the production of distilled spirits in his distillery, except in the intervals when he shall suspend work as hereinafter provided.

This provision gives every distiller one full fermenting period in which to prepare his mash or beer for distillation, and the liability to the 80 per cent capacity will commence on the last day of such period or on any previous day on which spirits are distilled.

SUSPENSION OF WORK

Any distiller desiring to suspend work (sec. 3310, Rev. Stat.) must give notice in writing to the administrator, on Form 124, stating when he will suspend work. On the day mentioned the administrator or one of his agents shall, at the expense of the distiller, proceed to fasten securely the door of every furnace of every still or boiler in said distillery, by securely locking the same, so that they can not be opened or any fire lighted in such furnace. Such notice and the report of the action taken thereon will be immediately transmitted to the commissioner.

No distiller can carry on the business of a distiller after the time stated in such notice until he shall have given another notice in writing, on Form 125, to the administrator, stating the time when he will resume work, at which time the administrator or one of his agents must attend and remove the locks and other fastenings, which action must be immediately reported (when done by an agent) to the administrator, and by him to the commissioner, and the report of the agent and administrator must distinctly state whether or not there was any mash, wort, or beer on hand at the time of such suspension.

In order that the distiller may have the full benefit of the provisions of section 3310, Revised Statutes, and that the suspension may commence as soon as there is no beer on hand, he should give notice, at least 24 hours before the time he wishes to suspend, fixing in the notice the exact time when his tubs will be empty and all the beer on his distillery premises will be distilled, and all spirits in the process of manufacture will be run into the receiving cisterns in the cistern room. This course will give the administrator ample time to notify his agent to proceed to the distillery and lock the furnace doors as required by law. The provisions for suspension under this section is where such suspension is at the desire of the distiller; and having mash, wort, or beer in the distillery during suspension is forbidden under heavy penalties. But it is further provided that nothing in this section shall be held to apply to suspensions caused by unavoidable accident, and that the commissioner shall prescribe regulations to govern in such cases of involuntary suspension.

In case of an accident necessitating a suspension, the distiller should, if possible, distill all the beer in his tubs; but should the accident be of such a nature as to render this impossible or impracticable, the distiller will immediately give notice to the administrator of the district in which the distillery is located, and said administrator will direct one of his agents to immediately proceed to the distillery and lock the furnace doors and so disconnect the machinery as to make distillation impossible, removing to the bonded warehouse some portion of the machinery necessary to distillation, at once notifying the administrator of his action, giving a full statement of the manner of dismantling the distillery and the precise quantity of beer in each tub. Should the agent fail to reach the distillery at the time stated in the notice the storekeeper-gauger on duty at the distillery may lock the furnace doors, disconnect the machinery, and remove some portion of the same necessary to distillation to the bonded warehouse, and note the quantity of beer on hand. Upon the arrival of the agent the storekeeper-gauger will deliver to him a certified statement show-

ing when the furnace doors were locked and the machinery disconnected and the quantity of beer on hand, and will also surrender the keys of the furnace doors. The agent will notify the administrator at once on Form 124, giving a full statement of the manner of dismantling the distillery and the precise quantity of beer on hand.

Such notice will be accompanied by the certified statement of the storekeeper-gauger. The suspension will then be allowed, provided the distillery remains so dismantled for a period of 24 hours, exclusive of the day on which the doors are locked or distillery dismantled, and the day on which the fastenings are removed or the machinery connected. The storekeeper-gauger will also make a record of the number of gallons of beer in each tub, giving its serial number, at the time of suspension, and also the gallons of beer in the beer well, and will see that the same beer remains at the resumption of work, less natural evaporation; and the agent, when he removes the locks and connects the machinery after such suspension, will note the quantity of beer on hand and report to the administrator, who will immediately forward a copy of such report to the commissioner. It will be observed that the law in providing for such involuntary suspension uses the word *accident*. This is not understood to include a failure of water or want of grain, or any circumstances which prevent the operation of the distillery, except an inevitable accident which can not be foreseen by the distiller, and which renders distillation impossible. Upon receipt by the administrator of the notice of his agent that he has disconnected the distilling apparatus on account of accident, and the account of beer on hand, he will immediately forward a copy of such notice and account to the commissioner, stating fully and explicitly the nature of such accident and upon receipt of notice of having reconnected the distilling apparatus and of having allowed the distiller to resume operations, together with an account of beer on hand at the time of resuming, forwarded by the agent to the administrator, the administrator will forward a copy of such notice and account to the commissioner.

It will be observed that in no case is the storekeeper-gauger authorized to remove locks and fastenings and connect the machinery upon a notice of resumption.

WHEN DEDUCTIONS ALLOWED

No deduction is to be made for a suspension of work unless the provisions of section 3310, and of regulations thereunder, are strictly complied with. The distiller must give two notices in writing to the administrator—first, of the time when he proposes to suspend work, and second, a like notice of the time he proposes to resume; at both of which times the administrator or his agent must be present to secure the furnaces or to remove the fastenings, as the case may be, and these two notices can not be combined in one.

Attention is called to the provision of this section imposing penalties upon any distiller who, after the time fixed in his notice of intention to suspend work, shall carry on the business of a distiller on said premises, or has mash, wort, or beer in his distillery or on premises connected therewith contrary to the provisions of said section.

COMMENCEMENT OF WORK AFTER SUSPENSION

Where a distiller resumes work after a suspension with no mash or beer on hand, he will be deemed to have commenced the distillation of spirits at 12 meridian on the last day of the first fermenting period or at the same hour on any previous day of such fermenting period on which spirits are distilled, and liability to 80 per cent of the capacity will accordingly commence on the last day of such period or on any previous day on which spirits are distilled.

In order that a proper allowance may be made the distiller should note on Form 14 and the storekeeper-gauger on Form 88 the time when spirits were first distilled—that is, run from the worm of the beer still—on resumption with no beer on hand.

When a distiller resumes with beer on hand, after an involuntary suspension, no allowance will be made in computing the 80 per cent.

FERMENTING PERIOD

Section 3285 of the Revised Statutes, as amended, provides that every fermenting tub shall be emptied at or before the end of the fermenting period; no fermenting tub in a sweet-mash distillery shall be filled oftener than once in 72 hours, nor in a sour-mash distillery oftener than once in 96 hours, nor in a rum distillery oftener than once in 144 hours.

This section as amended allows sweet-mash distilleries to ferment once and no more in 72 hours, sour-mash distilleries once and no more in 96 hours, and rum distilleries once and no more in 144 hours.

The fermenting period of each tub will begin when the filling of the tub begins or when the tub is actually full, at the option of the distiller; and the tub can not again be filled until the expiration of the period as established by law.

Each tub may be emptied at any time before the end of its fermenting period; but, unless sooner emptied, it *must* be emptied at the end of the period.

When a tub is emptied before the end of the period fixed by law, it must stand empty and open until the end of the period; after which it may, at the option of the distiller, again be filled, or may continue to stand empty and open, or may, upon notice from the distiller, be closed and sealed.

But no tub, after having been filled, can be closed and sealed for the purpose of limiting the producing capacity of the distillery until the expiration of the full period fixed by law.

CHANGES IN CAPACITY

Any distiller (sec. 3311, Rev. Stat.) desiring to reduce the producing capacity of his distillery must give notice of such intention in writing to the administrator (Form 126), stating the quantity of spirits which he desires thereafter to manufacture every 24 hours; and thereupon the administrator is required, at the expense of the distiller, to reduce and limit the producing capacity of the distillery to the quantity stated in his notice, by placing upon a sufficient number of fermenting tubs close-fitting covers, securely fastened by nails,

seals, and otherwise, so as to prevent the use of such tubs without removing said covers or breaking said seals; and whenever he shall be of opinion that other precautions are necessary, he will report the case to the commissioner for instructions.

Where a distiller desires to reduce capacity without reducing the number of tubs, it may be done by cutting down the tubs to the size required. The cutting out of one or more staves is not sufficient, but the whole tub must be cut off, in which case a new survey must be made, as hereinbefore provided. It is the custom in some distilleries to set the tubs in a slanting position that the beer may run out more readily, and that the tubs may be more easily cleaned. In such a case the distiller may cut the tops of his tubs to a water level, and as this would be a reduction of capacity a new survey may be made, and the average or mean depth may be taken. In case tubs are not so cut to a water level, no temporary or other additions will be allowed on the tops of the fermenting tubs to prevent overflow of beer.

When a distiller desires to reduce the producing capacity of his distillery by closing tubs then open, or to increase it by opening tubs then closed, he must give notice to the administrator on Form 126, stating the quantity of spirits he desires thereafter to produce every 24 hours.

Tubs closed to reduce capacity must be covered with close-fitting covers, which must be secured by nails, seals, and otherwise, and in such manner as to prevent the use of such tubs without breaking the seals and removing the covers.

The opening and closing of tubs must be done by or in presence of the administrator or one of his agents, who only are authorized to attach the fastenings and seals, or to remove the same from the covers placed upon the tubs not in use.

When fermenting tubs are closed in a grain or molasses distillery, either on one day or on certain successive days in one fermenting period, pursuant to a notice from the distiller of his intention to reduce the producing capacity of his distillery, and thereafter to manufacture daily a certain less quantity of spirits, the reduction in capacity resulting from closing the tub or tubs named in the distiller's notice will be deemed to occur, and will be allowed to the full extent of the total daily capacity of the tub or tubs closed, at the end of the same number of hours after the closing of the first tub which is fixed by the survey as the fermenting period for the distillery—that is, 72 hours, 96 hours, or 144 hours, as the case may be.

In like manner, when fermenting tubs are opened, either on one day or on certain successive days in one fermenting period, pursuant to notice by the distiller of his intention to increase the producing capacity of his distillery, and thereafter to manufacture daily a certain larger quantity of spirits, the increase in capacity resulting from opening such tub or tubs will be deemed to occur, and will be allowed to the full extent of the total daily capacity of the tub or tubs opened, at the end of the same number of hours after the opening of the first tub which is fixed by the survey as a fermenting period for the distillery—that is, 72 hours, 96 hours, or 144 hours, as the case may be.

Notices of change in capacity will be given on Form 126, revised, and will state the day or successive days, not exceeding one fermenting period in number, upon which tubs are desired to be closed, or to be opened, as the case may be, the serial numbers of the tubs to be closed, or to be opened, each day, the working capacity of each tub in gallons, and its daily capacity in bushels, the daily spirit-producing capacity of the distillery after the change shall be completed, and such other information as is called for by the form.

When a change is to be made by closing tubs, or by opening them, as the case may be, on successive days in one fermenting period, the notice should be given upon one Form 126.

When notice of changes to be made on successive days are given at different dates, or when tubs are opened or closed on days not immediately successive, only the change in capacity resulting from each opening or closing, as the case may be, will be allowed at the end of a period equal to the fermenting period fixed by the survey of the distillery, after such opening or closing.

When tubs are opened and other tubs are closed on the same day, their difference, if any, in daily capacity only, will be allowed.

It will be observed that the closing of the tub does not affect the capacity of the distillery at the time of closing; but that, on the contrary, its capacity is withdrawn from the total capacity of the distillery not later than at the end of one fermenting period from the closing of the tub, or the closing of the first of a series of tubs closed on each of successive days, when, because of such closing, the product of the distillery will be reduced.

So, also, the opening of tubs for the purpose of increasing capacity will not affect the capacity of the distillery until one fermenting period has elapsed from the opening of the tub, or from the opening of the first of a series opened on each of successive days, and until (if the tubs were filled) the spirit product of the distillery is affected thereby.

When the distiller is not using the full fermenting period allowed by law a change in capacity will take effect at the end of the fermenting period actually used or on the day when the spirit product of the distillery is or might be affected by the change.

The certificates of the administrator and officer assigned by him for such purpose (upon Form 126) will show that the tubs have been closed or opened in the manner required by law and regulations; the serial numbers of the tubs open, and the serial numbers of the tubs closed, after the change, and the daily capacity of the distillery resulting from the change, and the date when the same takes effect.

These notices are to be given in duplicate, and are hereby required to be delivered to or forwarded to the administrator on the day that the fermenting tubs are closed or opened, in accordance with the notice; and the administrators are required, on the day of their receipt, to examine the same, append their certificates, and cause the proper entries to be made in their record of registered distilleries (No. 45) and forward one copy to the commissioner. The retention of these notices by any officer or their accumulation in the office of the administrator must not be permitted.

CHANGE IN STRENGTH OF BEER

In case a distiller wishes to change his capacity by varying the strength of beer, and wishes to use a beer thicker than that authorized by the existing survey, a new survey should be made based upon the strength of beer named in the notice of the distiller. But in case the distiller wishes to use a beer thinner than that authorized by the existing survey, no new survey should be made or change of capacity allowed unless the strength of beer desired to be used by the distiller is within the minimum prescribed in section 3264, Revised Statutes.

ENLARGING CAPACITY

In case a distiller desires to increase capacity after his plans are furnished, the survey made, and his bond is approved, he must give notice on Form 27a, under section 3259, Revised Statutes, and if such change necessitates any alteration in his distillery, as the introduction of additional mash or fermenting tubs, a supplemental plan must be furnished showing the alterations. If such alterations are confined to one floor, a supplemental plan of that floor, properly certified, will be received. In case of increase of capacity over that fixed by the survey upon which the penal sum of the bond was based, a new notice and survey will be required, and a new bond will also be required, provided the penal sum of the existing bond is insufficient.

SPIRITS TO BE DEPOSITED IN RECEIVING CISTERNS IN CUSTODY OF STORE-KEEPER-GAUGER

All spirits, the manufacture of which is completed each day, must be conveyed into the receiving cisterns by or before midnight of the same day. The cisterns and the room in which they are contained must be in charge of and under the lock of the storekeeper-gauger designated for that duty. The administrator will designate the storekeeper-gauger to perform this duty. In no case, however, will any other storekeeper-gauger assigned be allowed to hold the key or have charge of the cistern room. The cistern room must not be opened or suffered to remain open except when the designated storekeeper-gauger is present, nor will the Government key at any time be suffered to pass into the possession of the distiller or any person in his employ, but will be retained at all times in the possession of the designated storekeeper-gauger.

REDISTILLATION ON DISTILLERY PREMISES

Section 3244, Revised Statutes, declares that every person shall be regarded as engaged in the business of rectifying who rectifies, purifies, or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort, or wash, through continuous closed vessels and pipes, until the manufacture thereof is complete. Therefore a distiller may carry his product through as many processes of distillation as he pleases, provided the process is *continuous*, commencing with the distillation of the mash, wort, or wash, *the product of distillation of the mash being carried*

through continuous closed vessels and pipes until the final product is deposited in the receiving cistern.

By the same section distillers are allowed to purify or refine distilled spirits in the course of original and continuous distillation, through any material which will not remain incorporated with such spirits, when the manufacture thereof is complete. The only processes of refining or purifying known to this office which can be allowed under the law are redistillation, leaching, or filtering through charcoal, flannel, or other similar purifiers. The apparatus to be used for purifying or refining in a distillery and the room or building containing the same must be arranged and constructed as required in instructions under the head "Redistilling or rectifying room," page 12.

On the completion of the process of purifying or refining, the substance through which the spirits have passed must be disposed of in some manner, and it is held that such substance can not be removed from the distillery premises without a violation of section 3296, Revised Statutes, which forbids the removal of distilled spirits to any place other than a distillery warehouse before the tax thereon has been paid. It is a well-known fact that the substance through which the spirits have passed will retain a considerable quantity of spirits, even after the usual process for recovering such spirits, and distillers are therefore forbidden to remove from the distillery premises any charcoal or other substance which has been used in the leaching tubs containing any spirits, but such substance may be consumed on the distillery premises as fuel, and will be entered upon the proper record in the same manner as other fuel.

GAUGING FOR ENTRY INTO WAREHOUSE

Each day's production of distilled spirits deposited in the receiving tank in a distillery will be gauged by weight under the rules prescribed in the Gauging Manual of 1929 and the details thereof reported on Form 1520 in quadruplicate under same date. One copy will be given to the distiller, one copy forwarded to the administrator of the district, one copy mailed to the commissioner at Washington, D. C., and one copy filed as a permanent record in the office of the storekeeper-gauger in charge of the warehouse. The forms will be pasted in File Book No. 68 in numerical order of the packages. The filing of these forms in this manner will obviate the necessity of entering the packages on Record 58.

ENTRY FOR DEPOSIT IN WAREHOUSE

Under the provisions of section 3293, Revised Statutes, as amended by section 14 of the act of May 28, 1880, every distiller will, on the first day of each month or within five days thereafter, execute Form 240, "Entry for Deposit in Distillery Warehouse," in triplicate, covering all spirits produced and deposited in warehouse during the previous month. The forms will be filed with the administrator for the district. The administrator will retain one copy, will send one copy to the storekeeper-gauger in charge of the warehouse, and will forward the other copy with his monthly bonded spirits account, Form 1514, to the commissioner at Washington, D. C.

BOND COVERING SPIRITS DEPOSITED IN WAREHOUSE

Every distiller will, on the first day of each month or within five days thereafter, execute bond, Form 1522, in duplicate, covering all spirits produced and deposited in warehouse during the previous month, except in cases where bond (Form 1522) is filed daily as the spirits are produced. The bond will be in sufficient penal sum to cover the internal-revenue tax on the spirits and the surety satisfactory to the administrator of the district. The administrator will note his approval on each copy, forward one copy to the commissioner, and retain one copy in his file. Such bonds may be without surety as provided in section 1205 of Regulations No. 2.

MARKING OF CASKS OR PACKAGES OF DISTILLED SPIRITS ON ENTRY INTO WAREHOUSE

Packages of distilled spirits produced and entered into the warehouse will be marked and branded in the manner provided in the Gauging Manual of 1929. Pursuant to the provisions of section 3324, Revised Statutes, all required stamps, marks, and brands must be completely obliterated from the packages when emptied.

WITHDRAWAL OF DISTILLED SPIRITS FROM BONDED WAREHOUSE

All distilled spirits withdrawn from a bonded warehouse will be regauged, stamped, marked, and branded, and reports thereof made as provided in the Gauging Manual of 1929 and Regulations No. 2. Upon withdrawal of any package or packages the date and purpose for which withdrawn will be noted in the unused space, columns 13 to 19 of Form 1520, covering the original gauge of the packages.

REMOVAL OF FUSEL OIL

The removal of fusel oil from distilleries, in quantities of not less than 200 gallons at one time, will be permitted upon compliance with the following requirements:

The oil must first be thoroughly washed and purified and withdrawn from the tank or tub into packages in the presence of the storekeeper, who will note upon his record, No. 17, the quantity of oil so withdrawn from the tub that day.

The distiller shall then, before removal of the oil from the distillery premises, give notice to the administrator of the district, stating the time at which he desires to make such removal and the quantity to be removed. The administrator, or an officer specially detailed for that purpose, shall attend at the time specified in the notice, and together with the storekeeper-gauger on duty at the distillery make test of the character of the oil by a tube to be provided by the distiller.

The oil, after having been washed or purified and drawn into packages, shall be thoroughly plunged or agitated, and then specimens drawn from each package into a test tube, to be provided by the distiller, for examination.

The test tube is of glass, bulb shaped and closed at one end, having a graduated scale marked upon the glass in degrees from 0 near the top to 100 near the swell of the bulb. The bulb will contain three

times as much liquid as that portion of the tube which is graduated from 0 to 100.

The tube having been filled with saturated salt solution up to the mark 100, oil shall be added until the tube is filled to the mark 0. The oil and saturated salt solution shall then be thoroughly mingled by violently agitating the contents of the tube. If, after sufficient time has been allowed for the oil to fully separate from the saturated salt solution and resume its position at the top of the tube, the scale shall show that not more than 10° or 10 per cent of the oil has disappeared or been dissolved in the saturated salt solution, the oil shall be passed as merchantable—that is to say, containing so minute a quantity of alcoholic spirits as not to be profitably recovered by distillation, but if over 10° of oil disappears the oil will not be considered as sufficiently purified, and can not be removed in that condition.

The cask containing oil fit for removal shall be marked by the distiller with his name and the number of the district, as in the case of a package of distilled spirits, and in addition with the name of its contents, in distinct and easily legible letters, and the date of removal.

When the examination is made by a prohibition agent or inspector, he and the storekeeper-gauger will immediately make report to the administrator, stating the date of their attendance, the quantity inspected, the percentage of loss upon test with saturated salt solution, and the quantity fit for removal.

The saturated salt solution to be used is a solution of common table salt (Na C.) in water, containing all the salt which the water is capable of dissolving. The solution is to be provided by the distiller.

The storekeeper-gauger will note upon Form 88, for the month, the quantity of oil removed during the month and the percentage of loss shown upon test.

Administrators will bear in mind that fusel oil is not obtained in any considerable quantities except in distilleries having an alcohol column or other apparatus for redistillation of high-proof spirits, and they will carefully note applications for removal of this oil in connection with the quantities of grain which have been used and of alcohol produced by the distiller.

The water used for washing or purifying the oil in the tanks or tubs may be run into the low-wine tub or into the sewer, or may be otherwise destroyed on the premises, as the distiller may prefer.

REMOVING DISTILLED WATER FROM DISTILLERY PREMISES

Distilled water must, under no circumstances, be drawn off in the cistern room, nor removed through the warehouse, and all such water when drawn off must be inspected by the storekeeper-gauger, who will also supervise its removal, and make an entry in some portion of Record No. 17, not otherwise used, of the date of removal, the number of barrels removed, and of the names of the persons to whom sent.

MASH, WORT, OR WASH

No mash, wort, or wash fit for distillation or for the production of spirits or alcohol can lawfully be made or fermented in any building

or on any premises other than a distillery or industrial alcohol plant duly authorized according to law, except for the manufacture of fermented liquors, or for the manufacture of vinegar, as provided by section 3282, Revised Statutes, as amended by section 5 of the act of March 1, 1879, and no mash, wort, or wash so made and fermented can be sold or removed from any distillery or industrial alcohol plant before being distilled; and no person other than an authorized distiller or proprietor of an industrial alcohol plant can, by distillation or by any other process, separate the alcoholic spirits from any fermented mash, wort, or wash, and no person can use spirits or alcohol in manufacturing vinegar or any other article or in any process of manufacture whatever unless the spirits or alcohol so used shall have been produced in an authorized distillery or industrial alcohol plant and the tax thereon paid except where withdrawn tax-free for denaturation and use as provided by existing law and regulations issued pursuant thereto.

NO OTHER BUSINESS TO BE DONE IN A DISTILLERY

The use of any still, boiler, or other vessel for the purpose of distilling is forbidden (sec. 3266, Rev. Stat.) in any dwelling house, shed, yard, or inclosure connected therewith, or on board of any vessel or boat, or in any building or on any premises where beer, lager beer, ale, porter, or other fermented liquors, vinegar, or other are manufactured or produced, or sugars or sirups are refined, or liquors of any description are retailed, or *where any other business is carried on*, or within 600 feet in a direct line of any premises authorized to be used for rectifying. The only exceptions are the manufacture of saleratus and the grinding of meal or flour from grain to be used only for distillation on the premises. Where there are gristmills or any other buildings not used in connection with the distillery adjoining a distillery they must be so entirely separated by solid walls and otherwise as to be in fact independent premises, although both establishments may be driven by the same power; in which case an opening will be permitted in the separating wall sufficient for the passage of a steam pipe or shaft, or both. They must be so arranged that the description of the distillery premises on Form No. 27a will not include the mill or other adjoining buildings.

OFFICER'S RIGHT OF ENTRY

Any prohibition officer or agent (sec. 3276, Rev. Stat., as amended) may at all times, as well by night as by day, enter any distillery or building or place used for the business of distilling, or used in connection therewith for storage or other purposes, and, if not admitted upon demand, having declared his name and office, he may break open any doors or windows or break through any of the walls of such premises necessary to be broken to enable him to enter.

Any officer or agent (sec. 3286, Rev. Stat., as amended) may require the water in any worm tub to be drawn off and the tub and worm cleansed at any time when the still is not at work, and the water must be kept out of the worm tub for two hours, or until the officer has finished his examination.

Pursuant to the provisions of section 3278, Revised Statutes, any prohibition officer and any persons acting in his aid may break up the ground on any part of a distillery or premises of a distiller or rectifier, or any ground adjoining or near any such distillery or premises, or any wall or partition thereof or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil, and upon finding any pipe or conveyance leading from or to the distillery premises to break up any ground, house, wall, or other place through or into which such pipe or conveyance leads, and to break or cut away such pipe.

MASHING, DISTILLING, AND REMOVAL OF SPIRITS PROHIBITED IN THE ABSENCE OF STOREKEEPER-GAUGER

The special attention of officers and distillers is directed to the penalties imposed in section 3284, Revised Statutes, for mashing, distilling, or removing spirits in the absence of the storekeeper-gauger, or person designated to act as storekeeper-gauger. Any mashing or distilling at any time when the storekeeper-gauger is not present is prohibited. It is the duty of all officers, and especially of administrators, to see that this law is obeyed and its violation noted and properly punished.

SUNDAYS

No malt, corn, grain, or other material (sec. 3283, Rev. Stat.) can lawfully be mashed, nor any wash, wort, or beer brewed or made, nor any still used by a distiller at any time between the hours of 11 in the afternoon of Saturday and 1 in the forenoon of the next succeeding Monday, under penalty of \$1,000 for each offense.

ASSISTANCE TO BE FURNISHED

Under the provisions of section 3277, Revised Statutes, on demand of any prohibition officer or agent every distiller or rectifier shall furnish convenient ladders to enable the officer or agent to examine any vessel or utensil in his distillery or premises, and shall furnish all assistance, lights, tools, or other things necessary for inspecting the premises, and shall open all doors, boxes, packages, and all casks, barrels, and other vessels not under the control of the Government officer in charge thereof.

NO DISTILLERY ALLOWED TO RUN WITHOUT COMPLIANCE WITH LAW AND REGULATIONS

Under no circumstances must a distillery be allowed to run until permit to manufacture spirits for nonbeverage purposes has been obtained as provided by Regulations No. 2, issued pursuant to Title II of the national prohibition act, and all other requirements of the law and regulations have been complied with; and any distillery found running without such compliance must be immediately stopped.

Administrators should instruct agents or other officers to visit the distilleries in their districts as often as possible, and at other than

stated intervals; and at such visits such agents or officers should carefully examine the distiller's yeasting book and the record of the storekeeper-gauger in order to determine whether such books are correctly kept; whether the fermenting tubs have each been emptied at or before the end of the fermenting period, and if emptied before the end of the period if they have remained empty and open until the end of the period; whether the mash or beer has been made of the consistency required by the survey; and whether the tubs have been filled above the dry inches allowed for fermentation. They should also see that the distillation of each day has been run into its appropriate cistern, and that the gauging officer inspects each package of spirits separately.

CONCERNING LOCKS AND SEALS

Under the provisions of sections 3267, 3270, and 3310, Revised Statutes, the commissioner is authorized to procure all locks and seals required to be used at distilleries and distillery warehouses at the expense of the United States, and to require to be put on any of the stills, tubs, cisterns, pipes, or other vessels such fastenings, locks, or seals as he may deem necessary.

In the exercise of the authority thus conferred, administrators are hereby directed to occasionally examine the distilleries and distillery warehouses in their districts, and determine whether or not they are fully supplied with locks, and if the same are in good condition.

In making this examination they will bear in mind that locks are required upon all openings in the distilling apparatus by which access may be had to the spirits while in transit from the still to the receiving cisterns; upon all caps or coverings of manholes or other openings of copper stills or doublers; upon all openings or hoppers through which the meal is conveyed to the mash tubs; upon the faucets and all openings of the receiving cisterns; upon the door of the cistern room; upon the door of the distillery warehouse; upon the door of the meal or grain room; upon the valve in the pipe which conveys steam to the still, which must be closed and locked when distilling operations cease for the day, or whenever there is a temporary or permanent discontinuance of distilling.

The door of the furnace of every still or boiler used in any distillery is required by section 3269, Revised Statutes, to be so constructed that it may be securely fastened and locked; and under the provisions of section 3310, Revised Statutes, it is required that locks shall be placed upon the furnace doors while the distillery is under suspension, which doors shall then be locked with locks used elsewhere while the distillery is in operation, to be taken from such points as may be designated by the administrator, and delivered to an agent of the administrator by the storekeeper-gauger for that purpose.

All openings found in the distilling apparatus by which access may be had to the spirits while in transit which are not absolutely necessary, and which can be permanently closed without injury to the distiller, will be closed in such manner and without the use of locks. Where the meal hoppers, or openings through which the meal is conveyed to the mash tubs, are so situated that by aid of a bar or chain

they may be closed so as to be under the control of the storekeeper-gauger with one lock, such bar or chain will be procured and used instead of using a lock to each hopper or opening.

All openings in cistern rooms and in distillery warehouses, except one door for each, must be securely barred upon the inside.

The only lock to the warehouse door must be the Government lock, the key of which must at all times be in charge of the storekeeper-gauger.

Administrators are instructed to forward a requisition for the locks required for use at a distillery about to commence operations at the same time the application for a warehouse is forwarded, and in making up the same care will be taken to state definitely—(1) the name of the distiller or distillery; (2) the whole number of locks required; (3) the precise place or part of the apparatus upon which each lock is to be used; and such requisition will be filled as soon as the warehouse is approved by this office, provided the foregoing requirements are fully complied with. Any locks heretofore prescribed and in good condition may be used.

In case any Government lock becomes defective or broken it should be returned to this office by mail, and at the same time a letter of transmittal should be forwarded informing this office that such lock has been returned, giving the kind and number of the same, and also stating the manner in which it became defective or broken.

Administrators will be supplied with seal locks and seals for use on the warehouse and cistern-room door only.

The Slight seal lock, having been adopted for use in the Internal Revenue Service, is issued for use on the doors of cistern rooms or warehouses. Seals will be furnished with the Slight lock, in sheets of 54 seals each, upon application by letter, which seals shall be used in consecutive order. Where a seal lock is required by regulation Slight locks will be employed.

The Slight lock is constructed with a clasp attached thereto, with a blind hinge at the bottom opening downward.

This clasp when open discloses an indentation in the face of the lock surrounding the keyhole and made to receive the seal. The lock being unlocked and the hasp open, the seal will be placed in the indentation made for its reception and the seal clasp shut, and the hasp pushed downward into the lock, locking the lock and the seal clasp at one and the same motion and time.

The seals being numbered consecutively, care will be taken to use them in the order in which they are numbered, using the lowest number first.

In cases where locks are required to be opened several times a day the seal will not be inserted until the lock is closed for the night, unless the officer having the lock in charge should have occasion to absent himself from the distillery premises during the day.

For securing portions of the distillery premises other than the doors of cistern rooms and the distillery warehouses suitable plain locks will be furnished.

All Government locks when not required for use at distilleries will be retained in the possession of the administrator of the district or one of his officers.

Storekeeper-gaugers are strictly prohibited from intrusting locks, keys, or seals in their charge to any person other than a prohibition officer entitled to receive the same, and under no circumstances will they permit locks to remain open, whether hanging by the shackle or otherwise.

Violation of these instructions will be deemed sufficient cause for removal from office.

Receipts will be taken by administrators from storekeeper-gaugers for all locks and seals placed in their charge. These officers will also be required to render to administrators a monthly report of seals and locks on Form 289.

Administrators will be held accountable for the Government locks supplied upon their respective requisitions, and for those received from their predecessors in office. Outgoing administrators will take receipts from their successors in office for the Government locks then in the district. Administrators will keep account of locks on Record 99 and make return thereof to the commissioner on Form 152.

Administrators are instructed, when the supply of paper seals has become nearly exhausted, to make requisition for a number of such seals sufficient to meet the wants of the district for six months.

Section 3268, Revised Statutes, provides that—

Every person who destroys, breaks, injures, or tampers with any lock or seal which may be placed on any cistern room or building by the duly authorized officers of the revenue, or opens said lock or seal, or the door to said cistern room or building or in any manner gains access to the contents therein, in the absence of the proper officer, shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than one year nor more than three years.

Section 3311, Revised Statutes, provides that every person who breaks, injures, or in any manner tampers with any lock, seal, or other fastening applied to any furnace, still, or fermenting tub, or other vessel, in pursuance of the provisions of law, or who opens or attempts to open any door, tub, or other vessel which is locked or sealed, or otherwise closed or fastened as herein provided, or who uses any furnace, still, or fermenting tub, or other vessel which is so locked, sealed, or fastened, shall be deemed guilty of a felony, and shall be fined not less than \$1,000 nor more than \$5,000, and imprisoned for not less than one year nor more than three years.

ASSESSMENTS FOR DEFICIENCIES AND FOR EXCESS OF MATERIAL USED

Under the provisions of sections 3182 and 3309, Revised Statutes, it becomes the duty of the commissioner to make the inquiries, determinations, and assessments against distillers imposed by section 3309. Revised Statutes, as amended; and, in order that there may be no unnecessary delay in making such assessment, administrators are hereby instructed to take such steps as will secure the forwarding of the distiller's return on Form 14, and the storekeeper-gauger's abstract on Form 88, within the time prescribed by law, which reports should be carefully examined by the administrator in order to satisfy himself that they are correct. In case of a grain or molasses distiller, the first point to be determined is whether the distiller has accounted for all the grain or molasses used and the spirits produced

by him during the month for which the returns are rendered, which will be determined from the returns of the distiller on Form 14, the abstract of the storekeeper-gauger on Form 88, and any other available evidence. The next point to be determined is the 80 per cent of the producing capacity of the distillery for the month. This will be found by multiplying the number of gallons fixed by the survey as the product for 24 hours by the number of days on which the distillery was in operation during the month, or under the law was deemed to be in operation. Eighty per cent of this product is 80 per cent of the capacity as determined by the survey.

In making this computation particular attention will be paid to changes in capacity resulting from opening or closing tubs. (See instructions under head "Changes in capacity," p. 39.)

If the quantity of spirits actually produced is found to be correctly reported, and the quantity so reported is less than 80 per cent of the capacity as determined from the survey, the difference between the reported product and 80 per cent will be assessed. On this point the law is imperative. But if the quantity actually produced and reported equals or exceeds the 80 per cent no assessment is to be made. Where, however, it is found that the distiller has actually produced more than he has reported or accounted for, and this amount exceeds the 80 per cent, the assessment is to be made upon the difference between the amount so found and the reported product, even though the reported product exceeds the 80 per cent, because the distiller should pay upon all the spirits produced by him.

Suppose the actual product is found to be 5,000 gallons, reported product 5,000 gallons, 80 per cent of capacity 6,000 gallons, the distiller would be assessed upon 1,000 gallons as a deficiency.

Suppose, however, the actual product is found to be 6,500 gallons, reported product 5,000 gallons, 80 per cent of capacity 6,000 gallons. The difference between the reported product and 80 per cent is 1,000 gallons, but between the reported product and actual product is 1,500 gallons, upon which latter amount the assessment will be made.

When the difference between the actual product and the reported product is greater than the difference between the 80 per cent and the reported product, the assessment will be upon the former quantity. When the reported product equals or exceeds the 80 per cent, but is less than the actual product, as above found, the assessment will be made upon the difference between the actual and reported product. But if in any case the actual product and the reported product are each less than the 80 per cent, the assessment must be made for the difference between the reported product and the 80 per cent.

The product for which the distiller is entitled to receive credit as against the required product under the survey is that quantity of finished spirits deposited in the cisterns in the cistern room by or before midnight of the last day of the month, and can not include any unfinished spirits remaining outside the cistern room at the close of the month.

The next point to be determined is whether the distiller has used any grain or molasses in excess of the capacity of the distillery.

In making this inquiry and determination, the quantity of grain or molasses used will be ascertained from the distiller's return, the storekeeper-gauger's monthly abstract on Form No. 88, and such other evi-

dence as is available; the quantity of grain or molasses, in bushels and pounds or gallons, on hand in mash at the beginning of the month, will be added to that put into mash during the month, and from the total will be deducted the quantity on hand in mash at the end of the month, and in computing the bushels of grain or gallons of molasses used from the gallons of mash or beer brewed or fermented, the same course will be pursued, namely, the mash or beer on hand at the beginning of the month will be brought forward and added to that made during the month, and the quantity on hand at the end of the month will be deducted therefrom; and the remainder only, in either case, will be considered as the quantity of material *used* during the month.

Under this rule the material distilled during the month, being the sum of the various quantities distilled on the several working days of the month, is held to be the quantity of material *used* during the month.

The total capacity of the distillery for the month (expressed in bushels of grain or gallons of molasses, as the case may be) is the sum of the different daily capacities of the distillery for the several working days of the month.

The inquiry and determination as to the excessive use of material which the commissioner is required by law to make is not a matter of discretion, but rests solely in computation, and consists in an arithmetical comparison of the quantity of material so found to have been used with the total capacity of the distillery for the month in question.

It will be observed that if the capacity of the distillery on each working day has been exactly equal to the material used—that is, *distilled* on that day—then the total capacity will equal the total material used, and no excess of material will be found; but if the capacity has on any day or days been less than the quantity of material used—that is, *distilled* on such day or days—then, unless there has been a corresponding and equal overplus of capacity on some other day or days of the same month, the total capacity will not equal the total material used, and an excessive use of material will be found, for which the statute requires an assessment to be made.

It will be observed that unless the aggregate capacity for the month equals the total material distilled during the month, an excess of material used must result, and be followed by an assessment equal to the tax on the spirits that should be produced from the quantity of grain used in excess of the capacity of the distillery for such month.

When a change is made in the *kind* of material used, the change of capacity resulting therefrom will be deemed to take place on the day when the new material is distilled, so that the material and capacity may balance each other.

Section 3264, Revised Statutes, as amended, provides that 45 gallons of mash or beer brewed or fermented from grain (except in sour-mash distilleries and filtration-aeration distilleries) shall represent *not less than* 1 bushel of grain, and 7 gallons of beer or mash brewed or fermented from molasses shall represent not less than 1 gallon of molasses. The gallons of mash or beer reported as used, if brewed from grain, will be divided by 45, or if brewed from molasses by 7, or by such less number as shall be taken in the survey to represent a bushel of grain or a gallon of molasses. If the grain or molasses is

correctly reported, this quantity in bushels or gallons should not exceed the surveyed capacity of the distillery in use during the month. If it exceeds the capacity in bushels of grain, or gallons of molasses (as the case may be), the quantity used in excess will be shown by the above computation. In determining the quantity of grain used, 56 pounds will be accounted as a bushel. The excess in bushels of grain or gallons of molasses having been determined as above, an assessment will be made against the distiller for the number of proof gallons of spirits that should have been produced from the grain or molasses used in excess of capacity.

Under the statute, as construed by the United States Supreme Court in the case of *Stoll et al. v. Pepper*, the following is the correct mode of computing the tax on distilled spirits in cases where grain or molasses is used in excess of the quantity allowed by the survey:

First. Divide the whole number of gallons of the reported product of the month by the whole number of bushels of grain used during the month. The quotient so found will show the reported product of each and every bushel of such grain. Then multiply that quotient, i. e., the reported product of 1 bushel, by the number of bushels of grain allowed by the survey. The result will show the reported product of all the grain so allowed. If that reported product equals or exceeds 80 per cent of the surveyed capacity of the distillery, and the entire actual product has been reported, there exists no liability to assessment for or on account of the grain used under the survey. But if that reported product is less than 80 per cent of such capacity there is liability to an assessment for the deficiency.

Second. If the reported product per bushel, found as above, is less than the full statutory estimate of the producing capacity per bushel, multiply the number of bushels of grain used in excess of the surveyed capacity by the difference between such reported product and such statutory estimate. The result will show the quantity upon which an assessment is to be made for and on account of the grain used in excess.

The legal tax will thus be realized (1) upon the entire actual product of the grain used under the survey, but in no case on less than 80 per cent of the surveyed capacity and (2) upon the entire actual product of the grain used in excess of the survey, but in no case on less than 100 per cent of the statutory estimate of the producing capacity of the grain so used.

The foregoing rule applies equally to molasses distilleries, gallons of molasses being substituted for bushels of grain.

Suppose, for example, the surveyed capacity for the time reported to be 300 bushels of grain, and 80 per cent of the spirit-producing capacity to be 960 gallons of spirits; the full statutory estimate per bushel of grain in the survey to be 4 gallons; the mash or beer used, 15,750 gallons; the number of bushels of grain reported, 300; and the spirits reported produced 875 gallons. The excess of grain used will be found by dividing 15,750 by 45 (or by such other number as shall be taken in the survey to represent a bushel of grain), which will give 350 bushels, or an excess of 50 bushels. Dividing the reported product, 875 gallons, by 350, the bushels of grain used, shows

the reported product of each bushel to be 2.50 gallons; this multiplied by 300, the number of bushels of grain allowed by the survey, shows the reported product of all the grain allowed by the survey to be 750 gallons. As this reported product is less than 80 per cent of the surveyed capacity, the difference, 210 gallons, is the quantity to be assessed as a deficiency.

The difference between the reported product of each bushel, 2.50 gallons and 4 gallons, the statutory estimate, is 1.50 gallons; this multiplied by 50, the grain used in excess, gives 75 gallons, the quantity upon which an assessment is to be made on account of such excess.

All assessments for excesses and deficiencies made under section 3309, Revised Statutes, as amended, will be at the rate of \$1.10 for each proof gallon.

STATUTORY RELIEF IN CASE OF ASSESSMENTS PROPOSED OR MADE UNDER SECTION 3309, REVISED STATUTES

ASSESSMENTS FOR DEFICIENCIES AND EXCESS OF MATERIAL USED

Section 6 of the act of March 1, 1879, provides:

That whenever, under the provisions of section thirty-three hundred and nine of the Revised Statutes, an assessment shall have been made against a distiller for a deficiency in not producing eighty per centum of the producing capacity of his distillery as established by law, or for the tax upon the spirits that should have been produced from the grain, or fruit, or molasses found to have been used in excess of the capacity of his distillery for any month, as estimated according to law, such excessive use of grain, or fruit, or molasses having arisen from a failure on the part of the distiller to maintain the capacity required by law to enable him to use such grain, or fruit, or molasses without incurring liability to such assessment, and it shall be made to appear to the satisfaction of the Commissioner of Internal Revenue that said deficiency, or that said failure, whereby such excessive use of grain, molasses, or fruit arose, was not occasioned by any want of diligence or by any fraudulent purpose on the part of the distiller, but from misunderstanding as to the requirements of the law and regulations in that respect or by reason of unavoidable accidents, then, and in such case, the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal made to him, to remit or refund such tax, or such part thereof as shall appear to him to be equitable and just in the premises: *Provided*, That no tax shall be remitted or refunded under the provisions of this section upon any assessment made prior to January first, eighteen hundred and seventy-four: *Provided further*, That no assessments shall be charged against any distiller of fruit for any failure to maintain the required capacity, unless the commissioner shall, within six months after his receipt of each monthly report, notify such distiller of such failure so to maintain the required capacity.

In order that the commissioner may be placed in possession of all the essential facts in case of any proposed assessment under section 3309, the administrator will, unless the interests of the Government shall require an immediate assessment, upon receipt from the commissioner of a list (Form 6984) of such proposed assessments, notify the distiller against whom the assessment is contemplated, and afford him an opportunity to point out any error in computation which he may discover, and also to furnish evidence that the use of grain or molasses by the distiller in excess of the capacity of the distillery has arisen from a failure on the part of the distiller to maintain the capacity required by law, and that the deficiency in production or the failure to maintain the capacity, as the case may be, was not occasioned by any want of diligence or by any

fraudulent purpose on the part of the distiller, but was the result of a misunderstanding on his part as to the requirements of the law and regulations in that respect, or was occasioned by an unavoidable accident.

In case such evidence, sufficient to satisfy the commissioner that such deficiency or failure to maintain the capacity was occasioned by a misunderstanding of the law or regulations, or by an unavoidable accident, and not by any want of diligence or fraudulent purpose of the distiller, is forwarded to the commissioner within 30 days after the Form 6984 is transmitted to the administrator, the assessment will be omitted; otherwise the assessment will be made on the next ensuing monthly list, provided such satisfactory evidence is not received in time for consideration prior to the day on which such list is made up and forwarded to the collector. Such evidence, received after the expiration of the 30 days, if not received in time to be considered before the list is forwarded to the collector, will be considered in connection with any claim for abatement or refund (Form 843) which may be subsequently forwarded by the distiller through the collector. The evidence furnished by the distiller must be in the form of affidavits, and must be taken under the conditions prescribed in these regulations, and must be accompanied by the sworn statements of the storekeeper-gauger on duty at the distillery during the month in which the deficiency in production or excessive use of the material occurred.

In case it is claimed that such deficiency or excess was occasioned by reason of unavoidable accident, the storekeeper-gauger will, if cognizant of the facts, state (1) the nature and origin or cause of the accident and the circumstances connected with the same; (2) what efforts were made by the distiller and his employees or agents at the time of the accident to prevent its occurrence; (3) what precautions were taken by the distiller, his employees or agents, prior to the accident, to guard against its occurrence; and (4) whether the accident was in any way attributable to any want of care, caution, attention, diligence, skill, or discretion, or to fraudulent purposes on the part of the distiller or any of his employees or agents. The affidavits of the distiller and of others who may testify should also set forth (1) the nature and origin of the accident, (2) such other facts as will assist the commissioner in determining whether the cause of the deficiency or failure was an accident, and (3) whether occasioned by any fraudulent purpose or want of diligence. If it is claimed that the deficiency or excess was occasioned by misunderstanding on the part of the distiller as to the requirements of the law and regulations, the affiants will testify (1) as to what opportunity the distiller had for information on these points; (2) they will also, in all cases, testify as to what efforts were made by the distiller and his employees and agents to maintain the capacity or to avoid the deficiency (a) during the month in which the failure or deficiency occurred, also (b) prior to the month in which the failure or deficiency occurred; (3) whether, in their opinion, such deficiency in production or failure to maintain the capacity, whereby the excessive use of material occurred, was occasioned by any want of diligence or by fraudulent purpose on the part of the distiller or his agents or employees; and the administrator, in forwarding the evidence to the commissioner,

will also state his opinion on these points, and as to the propriety of omitting to make the assessment, or any part thereof, as may appear to him to be equitable and just.

In order to avoid expense and loss of time in the preparation of applications for relief in cases where the applicant is not entitled to relief, administrators will call attention to certain legal constructions which have been placed upon the terms "accidents," "unavoidable accidents," and "diligence," and which constructions must guide this office in the consideration of such applications, viz:

ACCIDENTS

In determining what shall be considered an accident, it is held that not only will inevitable casualties or acts of Providence, or what may be called irresistible forces be considered, but such unforeseen events, misfortunes, losses, acts, or omissions as are not the results of any negligence or misconduct on the part of the distiller or owner of distilled spirits, or their agents or employees.

If the facts relied upon resulted from the operations of nature, they must be something out of the ordinary course of things. It can not be considered an accident that the sun shines; that it rains, snows, freezes, thaws; that a river rises or falls at certain seasons of the year; that water becomes warm in the summer and cold in the winter. If either of these ordinary processes of nature is adduced as a reason why a tax should be remitted, it must affirmatively appear that the change was so sudden and severe that it was out of the ordinary course of events and, therefore, could not be provided against.

When a case of accident of the above character occurs, the distiller must at once give notice to the administrator, so that the facts can be investigated and reported upon, and the immediate action of this office be had upon the question of suspending work.

UNAVOIDABLE ACCIDENTS

In placing a construction upon the words "*unavoidable accidents*," as they relate to the operations of distilleries, it will be necessary to consider the facts and circumstances relied upon as grounds of relief in each case. The act of March 1, 1879, requires due diligence on the part of the distiller and his agents and servants, and if the circumstances relied upon were the result of the negligence or misconduct of the distiller, or his agent or servant, he will have no claim to relief.

DILIGENCE

Diligence is the doing of things in proper time. As the opposite of negligence, it signifies, primarily, care, caution, attention, promptitude, skill, or discretion in the performance of an act.

RELEASE FROM ASSESSMENTS FOR DEFICIENCIES CAUSED BY DESTRUCTION OF SPIRITS

Section 6 of the act of March 1, 1879, as amended by section 8 of the act of May 28, 1880, reads as follows:

That whenever, under the provisions of section thirty-three hundred and nine of the Revised Statutes, an assessment shall have been made against a distiller for a deficiency in not producing eighty per centum of the producing capacity of his distillery as established by law, or for the tax upon the spirits that should have been produced from the grain, or fruit, or molasses found to have been used in excess of the capacity of his distillery for any month, as estimated according to law, such excessive use of grain, or fruit, or molasses having arisen from a failure on the part of the distiller to maintain the capacity required by law to enable him to use such grain, or fruit, or molasses, without incurring liability to such assessment, and it shall be made to appear to the satisfaction of the Commissioner of Internal Revenue that said deficiency, or that said failure, whereby such excessive use of grain, molasses, or fruit arose, was not occasioned by any want of diligence or by any fraudulent purpose on the part of the distiller, but from misunderstanding as to the requirements of the law and regulations in that respect or by reason of unavoidable accidents, then, and in such case, the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal made to him, to remit or refund such tax, or such part thereof as shall appear to him to be equitable and just in the premises. And the Commissioner of Internal Revenue, upon the production to him of satisfactory proof of the actual destruction, by accidental fire or other casualty, and without any fraud, collusion, or negligence of the distiller, of any spirits in process of manufacture or distillation, or before removal to the distillery warehouse, shall not assess the distiller for a deficiency in not producing eighty per centum of the producing capacity of his distillery as established by law when the deficiency is occasioned by such destruction, nor shall he, in such case, assess the tax on the spirits so destroyed: *Provided*, That no tax shall be remitted or refunded under the provisions of this section upon any assessment made prior to January first, eighteen hundred and seventy-four: *Provided further*, That no assessment shall be charged against any distiller of fruit for any failure to maintain the required capacity, unless the commissioner shall, within six months after his receipt of each monthly report, notify such distiller of such failure so to maintain the required capacity.

The direction to omit an assessment for a deficiency under the circumstances just stated is coupled with the conditions as to the destruction being accidental and without fraud, collusion, or negligence of the distiller, as in case of one class of allowances provided for in said section 6, as originally enacted.

When a distiller of spirits from grain or molasses is notified of a proposed assessment under section 3309, Revised Statutes, and he has reason to believe that the liability in whole or in part has been caused by an accidental fire or other casualty, or by a misunderstanding of the laws and regulations, and claims relief under section 6, act of March 1, 1879, as amended by section 8, act of May 28, 1880, affidavits will be required from the distiller, storekeeper-gauger, and other witnesses, if any, fully setting forth the facts and the extent to which the actual product or the required capacity has been affected by accidental fire or other casualty, or misunderstanding. These affidavits should be delivered by the administrator to an agent or other officer, who should diligently inquire into, ascertain, and state the facts in the case, give estimates of the amount of loss, if any, of spirits occurring by accidental fire or other casualty, or misunderstanding of the law and regulations, certify to the same, and transmit the papers to the administrator, who will then write out his opinion of the evidence in the case, with his recommendations as to omitting the proposed assessment or any part thereof, as may appear to him equitable and just, and then forward all the papers, with his opinion, to the commissioner. A strict compliance with these instructions may avoid the calling for additional papers.

Administrators are expected to keep in their respective offices the evidence that grain and molasses distillers have been, prior to assessment, notified of their liability for excess or deficiency, or for both, as the case may be.

PROCUREMENT AND PRESERVATION OF EVIDENCE IN CASES OF IRREGULAR SUSPENSIONS OF DISTILLERIES BY STOREKEEPER-GAUGERS AND OF LOSS OF MATERIALS BY CASUALTIES

1. Under the law and regulations the legal suspension of a distillery is not effected until the administrator or one of his authorized officers or agents visits the distillery and affixes locks to the furnace doors, except that in cases of involuntary suspension by reason of accident, if the authorized officer or agent fails to reach the distillery at the time stated in the notice, the storekeeper-gauger may affix the locks and disconnect the machinery; but to make the suspension effective in such a case from the date the locks are affixed by the storekeeper-gauger the authorized officer or agent must visit the distillery and verify the fact of suspension and the storekeeper-gauger's statement as to beer on hand, to all of which he must certify.

2. In case of suspension at a distillery which can not be recognized as legal because the authorized officer or agent fails to arrive at the time stated in the notice given by the distiller of his desire to suspend, such officer will visit the distillery as soon as possible, and in addition to the usual certificate on the notice he will, if in his judgment all operations actually ceased at the time stated in the distiller's notice of intention to suspend, at once take affidavits of the distiller and storekeeper-gauger, which should set forth the time of suspension, whether the furnace doors were locked and the machinery was so disconnected as to render distillation impossible, by whom locked and disconnected, and whether the distillery was operated between the date of such suspension and the time of the visit of the authorized officer or agent. Such officer will then forward these affidavits to the administrator, with a statement as to the condition in which he found the distillery, and whether in his opinion the statements made by the distiller and storekeeper-gauger are true. If the authorized officer or agent does not visit the distillery within five days after the suspension by the storekeeper-gauger, such officer should explain the cause of the delay.

3. Affidavits will also be required of the distiller and storekeeper-gaugers in cases where materials for distillation and spirits in cisterns have been destroyed by accidental fire or other casualty, and it will be the duty of the authorized officer or agent to procure such affidavits and forward them to the administrator with his statement as soon as possible after casualties occur, as the officers who are on duty can then more readily give the facts and proper estimates of such materials and spirits destroyed than at any subsequent time.

4. As the days of suspension and resumption are regarded as working days in ascertaining the distiller's liability, even though no work be done on those days, it is incumbent upon the distiller, in order to avoid the danger of an assessment for deficiency, so to fix the time in his notice of suspension that the locks may be affixed on the day all

work is concluded in the distillery, and not on the morning after, and so to fix the time of resumption that the locks may be removed on the day he intends to commence work, and not on the evening before work is commenced, as is sometimes done. The authorized officer or agent should be prompt in his attendance at the distillery to lock and unlock furnace doors on the day and hour stated in the notice.

5. Administrators are earnestly requested to instruct their officers to procure such data in order that when notified by this office that distillers are found legally liable for deficiencies in production of spirits for months in which irregular suspensions take place, or are charged with an excess of materials used, owing, perhaps, to casualties, such data may then be ready, in explanation of the liability, to be forwarded with the administrator's opinion and recommendation as required by these regulations.

J. M. DORAN,
Commissioner of Prohibition.
ROBT. H. LUCAS,
Commissioner of Internal Revenue.

Approved December 12, 1929.

A. W. MELLON,
Secretary of the Treasury.

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**END OF
TITLE**